AFFIRM in Part, REVERSE in Part, and REMAND; and Opinion Filed February 7, 2017.

In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-16-00349-CV

THE CITY OF DALLAS, Appellant/Cross-Appellee

V.

TRINITY EAST ENERGY, LLC, Appellee/Cross-Appellant

On Appeal from the 192nd Judicial District Court
Dallas County, Texas
Trial Court Cause No. DC-14-01443

MEMORANDUM OPINION

Before Justices Lang-Miers, Myers, and O'Neill[1]
Opinion by Justice Lang-Miers

Trinity East Energy, LLC sued the City of Dallas alleging that the City leased mineral rights on City-owned property to Trinity for the purpose of drilling for oil and gas, but then refused to approve Trinity's applications for permits to drill. Trinity alleged, among other things, claims for breach of contract and inverse condemnation. The City filed pleas to the jurisdiction arguing it was immune from suit and Trinity did not allege a viable claim for inverse condemnation. The trial court granted the City's plea in part and denied it in part. Both parties appeal. We reverse the order in part, affirm in part, and remand to the trial court for further proceedings.

[1] The Hon. Michael J. O'Neill, Justice, Assigned

BACKGROUND

The parties are very familiar with the facts of this case and we recite them here only as necessary to give context to the issues in this accelerated, interlocutory appeal. We also recite them in the light most favorable to Trinity, the nonmovant, as required under our standard of review.

The City was suffering a budgetary shortfall and decided to seek an additional source of revenue by leasing the minerals on City-owned property to a private party for developing the oil and gas. To do this, the City issued requests for proposals. The City specifically asked Trinity to submit bids. In the months leading up to the submission of its bids, Trinity held numerous discussions with the City to discuss the project. Trinity advised the City of its need for surface drilling sites on three specific pieces of property, two City-owned tracts and one privately owned tract that Trinity also had under lease. One of the City-owned tracts, referred to as the Radio Tower Tract, was located "in a semi-rural portion of the City where the nearest structures in Dallas are used for industrial purposes or liquor sales." The City Park Director said this tract was "an old property . . . we've not used for years. It has reverted back to parkland and is currently next to the golf course and would not in any way impact the park system or the park use."

Trinity asked for the City's pre-approval of these drill sites before closing on the leases; the City refused stating the process would take too long. But Trinity and the City negotiated the drill sites to be included in the leases, and these two sites were included. Trinity was assured the City "can make [the approval . . .] happen" for the Radio Tower Tract and that the City would make its best efforts to get approval of the other City-owned site.

The City accepted Trinity's bids and in August 2008 the City Manager and Trinity signed two leases that conveyed a fee simple determinable interest in the minerals to Trinity. The leases

identified four possible drill sites, including the two addressed above. The leases stated that the City would not unreasonably oppose Trinity's request for a variance or waiver if necessary for its operations. The total amount of compensation Trinity paid to the City was over $19 million and the right to receive royalties from production (25% of the oil and gas produced, or a cash royalty equal to 25% of the market value of the gas produced and sold).

After the leases were signed, Trinity began the long process of preparing to drill, which required numerous geological and engineering tests and designing drill sites, roads, and pipelines. This process included meeting with multiple City departments and officials and the U.S. Corps of Engineers. As the final step before drilling could begin, Trinity filed applications for permits to drill on the three tracts previously mentioned as surface locations for drilling, the two sites that were designated in the leases and the one privately owned site.[2] Due to the City's delay in processing the applications, Trinity sought and was given an extension of the leases.

It was undisputed that the sites for which Trinity sought permits to drill were located in park land, floodplain, or both. It was also undisputed that the City approved subsurface drilling in park land and that drilling in floodplain was allowed with a fill permit. Trinity obtained approval from the Corps of Engineers for three drill sites and 2,400 linear feet of pipeline in the floodplain, and after reviewing Trinity's applications, City staffers recommended they be approved. However, in spring of 2013 the Planning Commission voted 11 to 1 to deny the applications. It was urged to reconsider, which it did, and at the next meeting the vote was 9 to 6 to deny the applications. Trinity appealed to the City Council. But because the Planning Commission had denied the applications, the Council was required to override that denial by a vote of three-fourths of its members; the vote to approve received only a majority of the votes of the Council members. Consequently, the applications were denied.

[2] The permit that Trinity sought is a specific use permit, or SUP.

Following this denial, in December 2013 the City adopted a new gas well drilling ordinance with new, more restrictive setback requirements than before. The new ordinance negated any possibility of locating a drill site on the leased properties. Meanwhile, the leases expired, and the minerals reverted to the City.

Trinity sued the City. It alleged that the City's refusal to allow Trinity to perform under the leases was a breach of contract and deprived Trinity of its constitutionally protected property rights. Trinity alleged claims for breach of contract or alternatively declaratory relief, common law and statutory fraud, fraud by nondisclosure, promissory estoppel, negligent misrepresentation, and inverse condemnation. It also sought attorney's fees.

The City filed pleas to the jurisdiction in which it asserted it was immune from suit with regard to Trinity's claims for breach of contract, tort, and declaratory relief, and that Trinity had not alleged a viable claim for inverse condemnation. Trinity responded that the City's actions were proprietary for which immunity did not apply.

We conclude that the City acted in its proprietary capacity when it leased the mineral rights to Trinity and, as a result, governmental immunity does not apply. We also conclude, however, that even if the City was acting in its governmental capacity, Trinity alleged a viable claim for inverse condemnation. Accordingly, we reverse the trial court's order granting the City's plea to the jurisdiction in part and otherwise affirm.

STANDARD OF REVIEW & BURDEN OF PROOF

We review a trial court's ruling on a plea to the jurisdiction under a de novo standard. *Tex. Dep't of Parks & Wildlife v. Miranda*, 133 S.W.3d 217, 228 (Tex. 2004). Where, as here, the plea challenges the existence of jurisdictional facts, the trial court must consider relevant evidence submitted by the parties. *Id.* at 227. We take as true all evidence favorable to the nonmovant, and we indulge all reasonable inferences and resolve doubts in the nonmovant's

favor. *Id*. at 228. If the evidence creates a fact question regarding jurisdiction, then the trial court cannot grant the plea and, instead, the fact issue must be resolved by the factfinder. *Id*. at 227–28. But if the relevant evidence is undisputed or fails to raise a fact question on the jurisdictional issue, the trial court rules on the plea as a matter of law. *Id*. This standard has been said to mirror the summary-judgment standard and it protects a plaintiff from having to put on its case simply to establish jurisdiction. *Id*. at 228. Instead, when the facts underlying the merits and subject matter jurisdiction are intertwined, to defeat the plea to the jurisdiction, the plaintiff must show only that there is a disputed material fact regarding the jurisdictional issue. *Id*.

TRINITY'S CROSS-APPEAL

We begin with Trinity's cross-appeal on its claims for breach of contract, tort, and declaratory judgment. Trinity argued below that the City acted in its proprietary capacity when it leased the mineral rights to Trinity and governmental immunity does not apply to proprietary acts. The City responded that what the courts have termed the "governmental-proprietary dichotomy" recognized in tort claims did not apply and should not be extended to claims for breach of contract. The trial court granted the City's plea on these claims.

Shortly after the trial court granted the City's plea, however, the Supreme Court of Texas extended the application of the governmental-proprietary dichotomy to claims for breach of contract. *Wasson Interests, Ltd. v. City of Jacksonville,* 489 S.W.3d 427 *passim* (Tex. 2016). The court held that a municipality does not enjoy governmental immunity when it acts in its proprietary capacity, whether the claim sounds in tort or breach of contract. *Id*. at 439 ("[S]overeign immunity does not imbue a city with derivative immunity when it performs proprietary functions. This is true whether a city commits a tort or breaches a contract, so long as in each situation the city acts of its own volition for its own benefit and not as a branch of the state.").

On appeal, the City continues to argue that the governmental-proprietary dichotomy does not apply here because "[t]he City was exercising its governmental functions of regulations of parks, floodplains, and building codes and inspections when it entered into the Leases" and "[t]he grant or denial of a specific use permit is a zoning change, which is a governmental function." The City contends that the gravamen of Trinity's argument relates to the City's denial of permit applications and, consequently, it retains its governmental immunity from suit.

In determining whether a function is governmental or proprietary, we are to be guided by the Texas Tort Claims Act. *Id*. The Tort Claims Act provides a non-exclusive list of functions the legislature deemed were governmental; that list does not include leases of land or minerals. *See* TEX. CIV. PRAC. & REM. CODE ANN. § 101.0215(a) (West Supp. 2016). Governmental functions are "those acts which are public in nature and performed by the municipality 'as the agent of the State in furtherance of general law for the interest of the public at large.'" *Gates v. City of Dallas*, 704 S.W.2d 737, 738–39 (Tex. 1986) (quoting *City of Crystal City v. Crystal City Country Club*, 486 S.W.2d 887, 889 (Tex. Civ. App.—Beaumont 1972, writ ref'd n.r.e.)).

The Tort Claims Act also provides a non-exclusive list of proprietary functions and defines proprietary as "those functions that a municipality may, in its discretion, perform in the interest of the inhabitants of the municipality." TEX. CIV. PRAC. & REM. CODE ANN. § 101.0215(b). "[P]roprietary functions are not performed under the authority or for the benefit of the state" or "pursuant to the will of 'the people.'" *Wasson*, 489 S.W.3d at 436–37 (quoting *Tooke v. City of Mexia*, 197 S.W.3d 325, 343 (Tex. 2006)). Instead, a proprietary function is one which the city conducts for the benefit of only those who live within the city's corporate limits. *Id*. at 436.

Trinity cites *City of Corpus Christi v. Gregg*, 289 S.W.2d 746 (Tex. 1956), to support its argument that the City engaged in a proprietary capacity when it leased the minerals to Trinity.

The City argues that *Gregg* does not apply here because the case was decided before the legislature delineated what constitutes governmental versus proprietary functions in the Tort Claims Act. We agree with Trinity.

In *Gregg*, the city sought and obtained bids for the purpose of drilling for oil and gas on city property. *Id*. at 749. A.W. Gregg submitted the winning bid. *Id*. at 752. In accordance with the leases, Gregg made upfront bonus payments, started drilling immediately, and made royalty payments to the city of over $390,000 over the next two years. *Id*. For reasons not relevant here, the city sought to cancel the leases and Gregg sought to validate them. *Id*. at 749. The trial court instructed a verdict for Gregg. *Id*. at 748. The court of civil appeals reversed in part and remanded, and the city sought writ of error. *Id*. at 750. At the supreme court, one of the questions was whether the doctrine of estoppel applied to the city. *Id*. at 750–53. The court stated, "In making the leases upon which suit was brought the City acted in its proprietary capacity and not in its governmental capacity; therefore, it is subject to the legal principles of estoppel." *Id*. at 750 (citations omitted). In other words, the city's act of leasing its mineral interests to a private citizen for the purpose of drilling for oil and gas was a proprietary function. *Id*.

We believe *Gregg* controls the circumstances here. Like in *Gregg*, the City leased the mineral rights on City-owned property to Trinity. And the City admitted it "was wearing two separate and distinct hats during the applicable time period involving this case—*a property owner hat in connection with the Leases* and a regulatory hat in considering the [permit applications]." (Emphasis added). Even though the *Gregg* case was decided before the Tort Claims Act was enacted, the supreme court cited *Gregg* with approval as recently as 2006 when analyzing whether the doctrine of estoppel applied to the case under review. *City of White Settlement v. Super Wash, Inc.*, 198 S.W.3d 770, 773 n.3 (Tex. 2006) (citing *Gregg* when referring to a city's proprietary functions).

The City distinguishes *Gregg* by arguing that the purpose of the leases to Trinity was to regulate parks and floodplains, which is a governmental function. But in *Gregg*, it was undisputed that the land covered by the leases contained a portion of the city's water supply. *Gregg*, 289 S.W.2d at 752. And the leases in that case required Gregg to refrain from contaminating or injuriously affecting the water supply. *Id*. at 753. Still, the court said the city engaged in a proprietary function. *Id*. at 750.

The City also argues that Trinity's real complaint is about the City's denial of its permit applications, which the City characterizes as a "garden variety zoning denial," and argues that "when a complaint centers directly on a governmental function, the plaintiff cannot split various aspects of the operation and recharacterize some of them as proprietary." We disagree with the City's characterization of Trinity's complaint. *See Baker v. City of Robinson*, 305 S.W.3d 783, 786 (Tex. App.—Waco 2009, pet. denied) (refusing to characterize property owner's breach of contract and statutory fraud complaints as zoning dispute).

Trinity alleged that the City was suffering a budgetary shortfall and was seeking sources of additional revenue. A City employee testified that the purpose of the leases was "developing the City's minerals in a safe and efficient manner that both protects the public safety and promotes the maximum revenue for the City." These functions would benefit the residents within the City's corporate limits, but they would not benefit the public at large, that is, the State. Consequently, we conclude that the City was engaged in a proprietary function when it leased the minerals to Trinity.

But the City also argues that Trinity must satisfy Chapter 271 of the local government code in order to bring a breach of contract claim. In Chapter 271, the legislature waived immunity from suit for certain claims of breach of a contract. *See* TEX. LOC. GOV'T CODE ANN. §§ 271.151(2)(A); 271.152 (West 2016). The City argues that the leases involved here were not

contracts for purposes of Chapter 271's waiver of immunity. We do not need to decide that question, however, because Chapter 271 only applies to a claim of breach of contract where there is "*already existing* immunity." *Wasson*, 489 S.W.3d at 437–38 (citing LOC. GOV'T CODE § 271.151(2)(A)). Because the City was acting in its proprietary capacity, immunity does not "*already exist[]*" for purposes of Chapter 271, *see id*. at 439, and, consequently, Chapter 271 does not apply to this case.

We conclude that the City was engaged in a proprietary function when it leased the minerals to Trinity and, as a result, governmental immunity does not apply. Accordingly, the trial court erred by granting the City's plea to the jurisdiction on Trinity's claims for breach of contract, tort, and declaratory judgment.

CITY'S APPEAL

But even if the City acted in its governmental capacity because the leases involved decisions about permitting, we conclude that Trinity alleged a valid claim for inverse condemnation.

The Constitution of the State of Texas states, "No person's property shall be taken, damaged, or destroyed for or applied to public use without adequate compensation being made, unless by the consent of such person." TEX. CONST. art. I, § 17(a). The constitution waives governmental immunity for inverse condemnation claims. *City of Dallas v. VSC, LLC*, 347 S.W.3d 231, 236 (Tex. 2011). "Inverse condemnation is 'a cause of action against a governmental defendant to recover the value of property which has been taken in fact by the governmental defendant, even though no formal exercise of the power of eminent domain has been attempted by the taking agency.'" *Hearts Bluff Game Ranch, Inc. v. State*, 381 S.W.3d 468, 476 (Tex. 2012) (quoting *United States v. Clarke*, 445 U.S. 253, 257 (1980)).

To plead a claim for inverse condemnation, the claimant must allege an intentional government act that resulted in the uncompensated taking of his property. *City of Houston v. Carlson*, 451 S.W.3d 828, 831 (Tex. 2015). "A taking is the acquisition, damage, or destruction of property via physical or regulatory means." *Id.* "A regulatory taking is a condition of use 'so onerous that its effect is tantamount to a direct appropriation or ouster.'" *Id.* (quoting *Lingle v. Chevron U.S.A. Inc.*, 544 U.S. 528, 537 (2005)).

In this case, Trinity alleged a regulatory taking. However, the City argued that Trinity did not allege a viable regulatory takings claim. Before we consider that argument, we must first consider the City's threshold arguments that Trinity's takings claim is not ripe or is moot.

Threshold Issues

The City argues that Trinity's takings claim is not ripe because Trinity did not obtain a final decision on its permit applications; the City contends there were other drill sites available for which Trinity did not submit permit applications and Trinity never asked for a variance.

For a regulatory takings claim to be ripe, there must have been a final decision regarding the application of the regulations to the property at issue. *Mayhew v. Town of Sunnyvale*, 964 S.W.2d 922, 929 (Tex. 1998). "A 'final decision' usually requires both a rejected development plan and the denial of a variance from the controlling regulations." *Id.* (quoting *Williamson Cnty. Reg'l Planning Comm'n v. Hamilton Bank*, 473 U.S. 172, 187–88 (1985)). "However, futile variance requests or re-applications are not required." *Id.*; *see also Hallco Tex., Inc. v. McMullen Cnty.*, 221 S.W.3d 50, 60 (Tex. 2007). In other words, the "variance requirement is . . . applied flexibly in order to serve its purpose of giving the governmental unit an opportunity to 'grant different forms of relief or make policy decisions which might abate the alleged taking.'" *Mayhew*, 964 S.W.2d at 930 (quoting *S. Pac. Transp. Co. v. City of L.A.*, 922 F.2d 498, 503 (9th Cir. 1990)). We have said that ripeness requires action by both the landowner and the

government. *City of Dallas v. Chicory Court Simpson Stuart, L.P.*, 271 S.W.3d 412, 417 (Tex. App.—Dallas 2008, pet. denied). The landowner must give the government an opportunity to exercise its discretion, and the government must make a final decision. *Id*.

When viewed in the light most favorable to Trinity, the jurisdictional evidence showed that there was a factual dispute about whether the drill sites for which Trinity sought permits were the only viable drill sites for the property subject to the leases. The leases proposed four drill sites, and Trinity submitted permit applications for two of those four, as well as one application for a privately owned tract that Trinity had discussed with the City. Trinity's evidence showed that the two drill sites and the third privately owned site were the sites uniquely suited for development based on the restrictions of geology, proximity to existing structures or uses, or access constraints. The City denied Trinity's applications for all three drill sites. Trinity appealed the denials, and although the votes changed, the City ultimately denied the applications. Trinity's evidence showed that after the City denied the applications, it adopted a new gas well drilling ordinance that contained more restrictive setback provisions. Trinity presented evidence that the new ordinance made access to the proposed drill sites impossible, and there was no other permissible well site within the City limits that would allow access to the leased properties. In other words, Trinity argued and presented evidence that any additional efforts to apply for permits would have been futile because there were no viable drill sites that met the City's new ordinance. *See Hallco*, 221 S.W.3d at 60 (ordinance "prohibited precisely the use Hallco intended to make of this property, and nothing in the ordinance suggested any exceptions would be made" and claim was ripe). We conclude that Trinity's takings claim is ripe. *See id*.

The City also argued that Trinity's takings claim is moot because the leases expired and Trinity no longer owns the minerals, which have since reverted to the City. But that does not foreclose the possibility of a taking during the time in which Trinity owned the property. *See*

Lucas v. S. Cent. Coastal Council, 505 U.S. 1003, 1013 n.4 (1992) (concluding that even though ordinance amended two years later to allow property owner to apply for variance, owner still had takings claim for intervening two years in which unable to use property for purpose he intended). We conclude that Trinity's takings claim is not moot.

Takings Claim

We now turn to the City's argument that Trinity did not allege a viable takings claim. Texas law recognizes several theories under which a claimant may allege a regulatory taking, including (1) a *Lucas* claim, in which a property owner alleges that a property regulation denied the owner of all economically beneficial or productive use of the property, *see id*. at 1015–19; and (2) a *Penn Central* claim, in which a property owner alleges that, while a regulation did not deprive the owner of all economically viable use, the governmental action unreasonably interfered with the owner's use and enjoyment of his property, *see Penn Cent. Transp. Co. v. N.Y.C.*, 438 U.S. 104, 124 (1978)). *Edwards Aquifer Auth. v. Day*, 369 S.W.3d 814, 838–39 (Tex. 2012); *City of Sherman v. Wayne*, 266 S.W.3d 34, 43–44 (Tex. App.—Dallas 2008, no pet.).

Trinity alleged a takings claim based on both theories.[3] The trial court did not state the basis for its denial of the plea to the jurisdiction on the takings claim. Under the *Lucas* theory, the question is whether the governmental regulation has deprived the owner of all economically viable use of his property. This requires determining whether any value remains in the property after the governmental action. *Mayhew*, 964 S.W.2d at 935. We are mindful, however, that we are not examining the merits of Trinity's takings claim, but determining only whether Trinity presented evidence of a fact issue concerning the trial court's jurisdiction to hear the case.

[3] It also alleged a takings claim under an "acquisitory intent" theory, in which the government acts to gain an unfair advantage against an economic interest of an owner. *See Millwee-Jackson Joint Venture v. Dallas Area Rapid Transit*, 350 S.W.3d 772, 784 (Tex. App.—Dallas 2011, no pet.).

The City argued in its plea that Trinity did not allege a viable *Lucas* claim because the evidence showed that the value of Trinity's mineral interest was not affected by the denial of the permit applications. The City's jurisdictional evidence showed that at one point in the negotiations Trinity may have told the City that it "had 20-plus existing drill sites" on privately owned property from which it could access the minerals and that the potential drill sites offered by the City were not essential for Trinity to develop the leasehold position.

Trinity's evidence, however, showed that the leases specifically stated that "[d]rill site locations and all operations (as defined herein) shall be limited to designated portions of the Land. Such locations are identified on Exhibit A to this Lease." Two of those locations are the ones for which Trinity submitted permit applications that the City subsequently denied.

The evidence also showed that Trinity made the City aware that it intended to access the minerals on the privately owned property through drill sites on the City-owned property and that "much of the property leased to Trinity by the City . . . was not suitable for surface drilling activities due to geological reasons, proximity, or access constraints or was not allowable under existing City Ordinances at the time . . . ." Trinity presented evidence that "[t]he properties uniquely suited for development were those identified in the Leases . . . as well as the privately owned . . . site." Additionally, Trinity presented evidence that the only viable drill sites were those for which it sought permits to drill, and even those sites were not viable after the City adopted the new drilling ordinance.

Trinity presented evidence that it paid the City over $19 million for the opportunity to drill on the leased property and spent considerable time and money analyzing and preparing the property for drilling. Trinity's evidence showed that the value of the minerals on the City-owned property was over $62 million, and that after the City's action, the property was worthless because the City had deprived it of any ability to drill for the oil and gas. In other words, by

denying the permits to drill, the City made it impossible for Trinity to access the minerals and denied it all economically beneficial use of its property. *See Tarrant Cnty. Water Control & Improvement Dist. No. One v. Haupt, Inc.*, 854 S.W.2d 909, 913 (Tex. 1993) (inverse condemnation occurs when evidence shows surface drilling is only manner of use of surface whereby minerals can reasonably be produced but government prevents this one manner of surface use by mineral owners). Trinity's evidence also showed that during this process of trying to obtain permits to drill, the leases expired and the minerals reverted to the City, depriving Trinity of any opportunity to drill.

In summary, Trinity's jurisdictional allegations and evidence raise fact issues about whether the City's actions resulted in the deprivation of all economically viable use of Trinity's mineral interests. Although the ultimate determination of whether facts amount to a taking is a question of law, the trial court must resolve disputed issues of fact regarding the extent of the governmental intrusion of the property. *City of Dallas v. Millwee-Jackson Joint Venture*, No. 05-13-00278-CV, 2014 WL 1413559, at *7 (Tex. App.—Dallas Apr. 4, 2014, pet. denied) (mem. op.) (citing *Sheffield Dev. Co. v. City of Glenn Heights*, 140 S.W.3d 660, 673 (Tex. 2004), and *Wayne*, 266 S.W.3d at 43). And when the evidence raises fact questions on jurisdiction, the trial court cannot grant a plea to the jurisdiction; the fact issues must be resolved by the factfinder. *Id*. Because we conclude that Trinity alleged a viable *Lucas* claim, we do not need to consider whether Trinity also alleged a viable *Penn Central* claim.

CONCLUSION

We reverse the trial court's order granting the City's plea to the jurisdiction on Trinity's claims for breach of contract, tort, and declaratory relief, and otherwise affirm the order.

/Elizabeth Lang-Miers/
ELIZABETH LANG-MIERS
JUSTICE

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Court of Appeals
Fifth District of Texas at Dallas

JUDGMENT

THE CITY OF DALLAS, Appellant/Cross-Appellee

No. 05-16-00349-CV V.

TRINITY EAST ENERGY, LLC, Appellee/Cross-Appellant

On Appeal from the 192nd Judicial District Court, Dallas County, Texas
Trial Court Cause No. DC-14-01443.
Opinion delivered by Justice Lang-Miers.
Justices Myers and O'Neill participating.

In accordance with this Court's opinion of this date, the March 18, 2016 order of the trial court is **AFFIRMED** in part and **REVERSED** in part. We **REVERSE** that portion of the trial court's order that granted Appellant/Cross-Appellee City of Dallas's plea to the jurisdiction on Appellee/Cross-Appellant Trinity East Energy, LLC's claims for breach of contract, declaratory judgment, common law and statutory fraud, fraud by nondisclosure, promissory estoppel, negligent misrepresentation, and attorney's fees, and **REMAND** those claims to the trial court for further proceedings consistent with this opinion. We **AFFIRM** the trial court's March 18, 2016 order denying the City of Dallas's plea to the jurisdiction on Trinity East Energy, LLC's claim for inverse condemnation.

It is **ORDERED** that Appellee/Cross-Appellant Trinity East Energy, LLC recover its costs of this appeal from Appellant/Cross-Appellee the City of Dallas.

Judgment entered this 7th day of February, 2017.