



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



**DBT YUMA, L.L.C. V. YUMA COUNTY AIRPORT
CV-15-0019-PR**

PARTIES:

Petitioners: DBT Yuma, L.L.C., DBRT Yuma FBO, LLC, DBRT Yuma Hangars, LLC, and DBRT Yuma Maintenance, LLC, all d/b/a Lux Air

Respondents: Yuma County Airport Authority and Yuma County.

FACTS:

In 1939, the Arizona Legislature enacted statutes allowing cities to create non-profit airport authorities and lease land to them for the operation of airports. Ch. 48 A.C.A., 1939. In 1956, the real property on which the Yuma International Airport currently exists was conveyed to Yuma County by Patent from the United States. In 1965, the Legislature amended the airport authority statutes, extending them to counties. The same year, Yuma County Airport Authority (“the Authority”) was established as a non-profit corporation to operate the Yuma International Airport.

In 1966, the County entered into an agreement with the Authority, leasing the airport premises to the Authority, subject to detailed provisions concerning the parties’ respective obligations. In 1973, the County and the Authority entered into another agreement, referencing the original 1966 agreement and providing that “the County hereby constitutes and appoints [the Authority] as its agent to improve, develop, operate and maintain the airport facility . . . to be developed upon the [subject lands].”

In 2008 and 2009, the Authority subleased airport property to Petitioners (“DBT”) for a fixed-based airline operation. In October 2009, however, after a series of communications and actions disputed by the parties, the Authority terminated DBT’s subleases and evicted DBT from the Airport. The Authority then installed Careflight, a competing vendor, on the premises previously occupied by DBT. A year later, DBT filed suit against the Authority, alleging breach of lease and breach of implied covenant of good faith and fair dealing. DBT subsequently added the County as a defendant, with allegations that the Authority had committed the alleged breaches “as an instrumentality and alter ego of Yuma County.”

DBT and the County both filed motions for summary judgment. The County’s motion asserted that, as a body politic performing an essential governmental function without control by the County, the Authority was a separate and independent entity, and the County was not liable for the conduct of the Authority under the criteria established for an alter ego relationship. DBT, on the other hand, argued that by the express terms of A.R.S. §28-8424 the Authority was an “agency or instrumentality” of the County. It argued that the criteria for an alter ego relationship were immaterial, since the statute expressly established an agency relationship between the Authority

and County. While it might be that the County had not exercised its right of control, the lease agreement said the County ultimately controlled the airport.

The trial court entered summary judgment in favor of the County and against DBT. DBT appealed.

The court of appeals affirmed the order granting summary judgment in favor of the County. It first determined that the Authority was not an alter ego of the County because DBT showed no “unity of control” between the two entities such that observance of the Authority’s corporate form would sanction a fraud or promote injustice. Likewise, vicarious liability did not apply because the record was devoid of evidence showing that the unity of control between the Authority and County was so pronounced that “the individuality or separateness” of the two “had ceased to exist.” *Ferrarell v. Robinson*, 11 Ariz. App. 473, 476, 465 P.2d 610, 613 (1970). In fact, when DBT moved for summary judgment against the Authority, before adding the County, DBT’s counsel had admitted, “[The Authority] is an independent public agency that is not really answerable to anyone. [The airport’s Director] is answerable to the [Authority’s] board, but the members of the board are not answerable to anyone else.”

The court next considered whether A.R.S. 28-8424 imposed vicarious liability upon the County and found that it did not. Although the statute provides that a nonprofit corporation such as the Authority “[p]erforms an essential governmental function as an agency or instrumentality” of a county, nothing in the statute expressly imposes vicarious liability on counties. To the contrary, by characterizing such lessees as bodies “politic and corporate,” the legislature shielded lessor counties from liability; such a limitation on liability is a legitimate purpose of incorporation. *See Dietel v. Day*, 16 Ariz. App. 206, 208, 492 P.2d 455, 457 (1972) (noting that “a legitimate purpose of incorporation is to avoid personal liability and if the corporate fiction is too easily ignored and personal liability imposed, then incorporation is discouraged.”). In this case, the lease was consistent with this purpose, as it provided that the Authority “shall be responsible for and shall indemnify and hold the County harmless from all claims arising out of or in respect to all leases, permits, licenses, contracts and agreement made from and after the effective date of this lease.”

Finally, the Court held, to construe the phrase “agency or instrumentality” as imposing vicarious liability on counties that did not create the corporate authority and have no control over the lessee, would collapse the distinction between a county’s operation of its own airport as opposed to through a lease arrangement, rendering the distinctions within the statute meaningless. This would likely result in few counties choosing to operate their airport via lease agreement with nonprofit corporations.

Because DBT presented no evidence that the County controlled the Authority and because the statute did not impose vicarious liability on counties, the court affirmed the summary judgment in favor of the County.

ISSUE:

“The issue presented for review is whether Division One correctly decided that Yuma County is not responsible for the actions of its agency or instrumentality.”

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