IN THE COURT OF APPEALS
STATE OF GEORGIA

APPEAL NO. A23A0652

GARY ERWIN,
Appellant,

v.

CONYERS HOUSING AUTHORITY,
Appellee.

BRIEF OF APPELLEE CONYERS HOUSING AUTHORITY

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PART ONE

I. APPELLEE'S RESPONSE TO STATEMENT OF FACTS AND STANDARD OF REVIEW

A. Statement of Facts

This is a breach of contract action brought by the former Executive Director of the City of Conyers Housing Authority, Gary Erwin ("Erwin"), against the City of Conyers Housing Authority (the "Housing Authority") following Erwin's termination for cause on December 22, 2020. Erwin contends that he entered into a series of employment contracts with the Housing Authority, the last of which was allegedly signed in 2019 (the "Contract") by the former Chairman of the Housing Authority Board of Directors ("Board"). See Record in Appeal No. A22A1715 (the "Record"), pp. 5 and 24.[1]

Erwin's Appellant Brief claims, without factual support in the record (or in reality), that he "prioritized the interests of Rockdale County's less fortunate citizens over the interests of a powerful few who sought to use [the Housing Authority's] coffers for personal gain [and that his] willingness to speak truth to power cost him his job." Appellant's Brief, p. 1. While Erwin is entitled to have

[1] The Appellant Brief repeatedly refers to the Record from the prior appeal (Appeal No. A22A1715) as the "Record" (or "R") in the instant appeal (Appeal No. A23A0652). Appellant then refers to the A23A0652 Record as the "Supplemental Record" (or "S.R."). To the extent possible, the Housing Authority concedes that both the "Record" and the "Supplemental Record" together should have been brought up as the Record in the instant appeal, and the Housing Authority adopts Appellant's naming convention in its Appellee Brief to minimize the confusion.

this case decided on the Pleadings, these false and self-serving allegations were not even asserted in Erwin's Complaint [R. 4-17], and Erwin is not entitled to a presumption that they are true.

In reality, Erwin was terminated for gross incompetence and dishonesty, which the Housing Authority politely described as "errors" in his termination notice. [R. 30]. Notably, the Housing Authority discovered that Erwin substantially underreported the Housing Authority's debt service in its financial statements between 2015 and 2018 by approximately ***$811,032.00 per year***. [R. 30]. That is why Erwin was terminated, but the grounds for his termination are irrelevant because the Trial Court correctly held that contractual provisions relied upon by Erwin were unenforceable and void in any event.

Relevant here, Article I of the Contract, 'Term of Employment,' purports to guarantee Erwin four years of employment after he receives notice that the Housing Authority no longer requires his services. [R. 19-20]. Article I establishes a base contract term of five years, and then adds an additional year to the term annually unless the Housing Authority provides notice of its intent to terminate at least 90 days prior to the anniversary of the Contract. [R. 19-20]. In the event that the Housing Authority exercises its right to terminate under this section, the Housing Authority would be required to continue to employ Erwin for *four additional years thereafter*. [R. 19-20]. Stated plainly, the Contract at issue

here purports to bind the Authority to having to retain Erwin's for four years after the Authority exercises its right to terminate. In full, Article I of the Contract provides as follows:

> I. TERM OF EMPLOYMENT
>
> In consideration of the Employer recognizing that the subject Employee has thus far performed and provided professional services in his/her previous employment in the past and during his/her current tenure as Executive Director in a manner that has been both satisfactory and acceptable, the Employer and the Employee agree that this Contract of Employment shall have a term of (5) years from the date of this Contract of Employment. Unless notice of termination is given by either party, as hereinafter set forth, there shall be an automatic extension of a one year term following each annual anniversary of the original five-year term and of any extension thereof. To prevent said automatic extension, either the Employee or the Employer shall give written notice of termination of employment and of this agreement to the office at least ninety (90) days prior to the annual anniversary of said agreement. If such notice of termination is given, it will not alter or shorten the then existing term of this Agreement, but shall only prohibit the automatic one year extension. It is the intention of the parties that this provision shall operate as an "automatic extension clause" so that the contract will automatically be extended for one additional year as of each Agreement date and so that the contract (if not earlier terminated by notice of either party as described herein) shall always have a remaining four-year term. In the event a notice of termination is given as outlined above, its effect will be that this Agreement will no longer automatically extend, but will expire at the end of the then existing term.

(Emphasis added.) [R. 19-20].

Article IV, A, of the Contract, 'Compensation and Fringe Benefits,' provides that Erwin's salary would an amount to be determined "at any given time" on an

ongoing basis by the Board of Directors for the Housing Authority and subject to the availability of funds:

> A. The salary for the position shall be subject to the availability of such funds in accordance with the usual and customary budget process each year. Such salary shall be that amount approved by the Board of Commissioners at any given time including any benefits. The employee's current salary has been set at a minimum of $109,219.62, or as established by the most current annual operating budget.

(Emphasis added.) [R. 20-21]. Although the Contract recites Erwin's "current salary," it leaves the salary to the Board of Directors' sole discretion. [R. 20-21].

With respect to the Housing Authority's right to terminate Erwin's employment under the Contract, Article VIII of the Contract attempts to limits the grounds for termination for cause to "crime[s] of moral turpitude, malfeasance, or misfeasance," incompetence, breach of contract, failing to comply with directives of the Board of Directors, "or for similar just cause." [R. 22-23]. In full, Article VIII provides as follows:

> VIII. REASONS FOR DISCHARGE
>
> It is herein understood that, notwithstanding the term provided under Article I of this contract, the Employer reserves the right to terminate the subject Employee prior to the expiration of the term of this Contract of Employment, in the event the Employee is found guilty or confesses to a crime of moral turpitude, malfeasance, or misfeasance, including personal dishonesty, willful misconduct, breach of fiduciary duty, failure to perform required duties, willful violation of any law, rule of regulation (other than misdemeanor traffic violations or similar offenses), specific proven incompetence or material breach of this Contract of Employment. This Agreement shall not be terminated by the Employer during this term except upon showing of serious or

> repeated failures on the part of the Employee to comply with Authority policy, or upon a showing that Employee has failed without just cause to comply with any lawful decision or directive of the Employer **or for similar just cause**. Just Cause shall hereinafter be defined as that which is based upon reasonable grounds and that which must be for fair and honest causes, and such are regulated by good faith. The Executive Director shall be afforded due process as prescribed in the personnel manual and shall be given an opportunity to present his/her side of any issue, which is purported to be grounds for dismissal for any reason. Employee will receive all accrued benefits if discharged.

(Emphasis added.) [R. 22-23].

Finally, Article XI of the Contract require an award of attorney's fees to the "prevailing party" in any action to interpret or enforce the terms of this agreement, and Article XII provides that any provision of the Contract, including Article XI, for example, would survive even if other provisions are held to be "invalid, void, or unreasonable":

> XI. LITIGATION
>
> If any action at law or equity is necessary to enforce or interpret the terms of this Contract of Employment, the prevailing party shall be entitled to reasonable reimbursement for attorney's fees, court cost, and other necessary disbursements in addition to any other entitled relief.
>
> XII. SEVERABILITY
>
> If any provision in this Contract of Employment, is held by a court of competent jurisdiction to be invalid, void or unreasonable, the remaining provisions, shall nevertheless, continue in full force without being impaired or invalidated in any way.

[R. 23].

B. Standard of Review

On appeal from the grant or denial of a motion to dismiss (or a motion for judgment on the pleadings), this Court conducts a *de novo* review of a trial court's ruling. Dove v. Ty Cobb Healthcare Sys., Inc., 316 Ga. App. 7, 9 (2012) In doing so, the standard is "whether the allegations of the complaint, when construed in the light most favorable to the plaintiff, and with all doubts resolved in the plaintiff's favor, disclose with certainty that the plaintiff would not be entitled to relief under any state of provable facts." Id. The same standard applies to motions for judgment on the pleadings. Seaboard Coast Line R. Co. v. Dockery, 135 Ga. App. 540, 543 (1975).

PART TWO

II. ARGUMENT AND CITATION OF AUTHORITIES

A. The Trial Court Did Not Err in Adopting the Housing Authority's Proposed Order, and Erwin Failed to Enumerate This Claim as an Error.

Erwin argues in Section III (B) of his Appellant's Brief that "this Court should reverse the Final Merits Order because the trial court adopted [the Housing Authority's] 'Proposed Order' verbatim, without conducting an appropriate legal and factual analysis." This is not grounds for a reversal; it is a red-herring meant to cast dispersion on the trial court. Furthermore, this is not enumerated as an error and, therefore, it cannot be considered on appeal. State v. Crossen, 328 Ga. App. 198, 203 (2014) citing Manley v. State, 287 Ga. App. 358, 360 (2007).

Nevertheless, the Housing Authority specifically objects to Erwin's demonstrably false assertion that the trial court order was "filled with factual inaccuracies and irreconcilable legal tensions." Appellant's Brief, p. 9. The "factual inaccuracy" objected to by Erwin is the trial courts finding that the Contract "purports to guarantee Mr. Erwin four additional years of employment after he receives notice that the Housing Authority no longer requires his services." Appellant's Brief, p. 10. That is a true statement. [R. 19-20, *Article I of the Contract*]. Erwin's objection is that he was not "guaranteed" four additional terms of employment because he could have been terminated for cause under the Contract, in which case his employment would end immediately. Appellant's Brief, p. 11. Erwin argues that this "poisoned" the Final Merits Order because the possibility of a for-cause termination meant that it would not have been cost prohibitive to terminate him. This is sophistry.

In the context of the Housing Authority's Motion for Judgment on the Pleadings, it makes no difference whether there is a for-cause termination provision when deciding whether a contract term violates the rule against binding subsequent councils. In fact, two of the cases cited by the Housing Authority in its briefs involved contracts with for-cause termination, and possibility of a for-cause termination had no bearing on the courts' analysis whatsoever. See Madden v. Bellew, 195 Ga. App. 131, 132 (1990), rev'd, 260 Ga. 530 (1990) ("To hold

otherwise would, in effect, bind all successive county commissioners and chairmen to the choice of their predecessors, until and unless the county attorney was removed **for cause**….") (Emphasis added.); see also City of McDonough v. Campbell, 304 Ga. App. 428, 430 (2010), rev'd, 289 Ga. 216 (2011).

The "irreconcilable legal tensions" Erwin alludes to in Section III (B) of his Appellant's Brief is the the fact that the Housing Authority's Motion for Judgment on the Pleadings asserted two *alternative* theories on why the Erwin's Complaint should be dismissed, and the trial court agreed with the Housing Authority on both points. Appellant's Brief, p. 23. Erwin argues that Article I of the Contract, 'Term of Employment,' could not violate the rule against binding subsequent councils if Article IV, A, of the Contract, 'Compensation and Fringe Benefits,' was unenforceable. Appellant's Brief, p. 23. This point was not lost on the trial court, however. Specifically, the trial court held that Erwin had failed to state a claim for relief "because Article IV, A, of the Contract, 'Compensation and Fringe Benefits,' is not an enforceable promise of future compensation" and, "[a]lternatively, that Article I of the Contract, 'Term of Employment,' is unenforceable as it would bind future Housing Authority Boards." [R. 172]. The trial court "agree[d] with the Housing Authority on each point," [R. 172], but this is not error.

B. The Trial Court Did Not Err in Holding that the Employment Contract Did Not Contain an Enforceable Promise of Future Compensation.

The question presented in Erwin's first enumeration of errors is whether the trial court erred in holding that Article IV, A, of the Contract, 'Compensation and Fringe Benefits,' is not an enforceable promise of future compensation. This was not error. Article IV, A, of the Contract [R. 20-21] is an unenforceable promise of future compensation that it neither guarantees Erwin an exact salary and benefits, nor does it provide a formula for determining the exact salary and benefits due under the Contract.

It is well-settled that, to be enforceable, "a promise of future compensation must be for an exact amount or based upon a formula or method for determining the exact amount of the payment." Phillips v. Adams, Jordan & Herrington, P.C., 350 Ga. App. 184, 186–87, (2019) (emphasis added). The underlying principle expressed in this rule is that "[w]here the basis for rendering certain a payment of future compensation is **at least in part** afforded by a future exercise of discretion, the promise of future compensation amounts to a promise to change the terms of compensation in the future and, thus, is an unenforceable executory obligation." (Emphasis added. Citation and punctuation omitted.) Id. at 187; accord Arby's, Inc. v. Cooper, 265 Ga. 240, 242 (1995) ("In this case, the basis for rendering certain the bonuses promised to Cooper is **at least in part** afforded by a future

exercise of discretion. In such circumstances, the promise to pay a bonus in the future amounts to a promise to change the terms of compensation in the future and, thus, is an unenforceable executory obligation.") (emphasis added); c.f. Rodriguez v. Miranda, 234 Ga. App. 779, 783 (1998) ("This sum became fixed and certain by mathematical calculations which were or should have been in the possession or knowledge of CCC when 1987 ended.")

Applying the aforementioned rule in this case, the trial court correctly held that Erwin has failed to state a claim for breach of contract because the Contract does not contain an enforceable promise of future compensation. The Contract does not establish an *exact* salary for future years, nor does it provide a *definite formula* for determining Erwin's compensation in future years. Rather, Article IV, A, of the Contract, merely recites Erwin's "current" (i.e., 2019) salary, and then reserves *complete discretion* to the Board in determining Erwin's future compensation on an ongoing basis "at any given time" and "subject to the availability of such funds."

> A. The salary for the position shall be ***subject to the availability of such funds*** in accordance with the usual and customary budget process each year. ***Such salary shall be that amount approved by the Board of Commissioners at any given time including any benefits***. The employee's current salary has been set at a minimum of $109,219.62, or as established by the most current annual operating budget.

(Emphasis added.) [R. 20-21].

Stated summarily, Erwin was not promised an "exact amount" of future compensation under the alleged Contract. Instead, the parties agreed that the Board would retain plenary discretion in determining the value of his services "at any given time." This is not an enforceable promise of future compensation. Therefore, the trial court properly dismissed Erwin's Complaint because he "could not possibly introduce evidence within the framework of the complaint sufficient to warrant a grant of the relief sought." Austin v. Clark, 294 Ga. 773, 774 (2014).

In response, Erwin contends that the trial court erred in deciding this issue on a motion for judgment on the pleadings based on the Contract alone. Appellant's Brief, p. 13. Erwin contends that parol evidence would have shown that the "original indefiniteness" had been "obviated." Appellant's Brief, p. 15. This argument is frivolous. Erwin's claim was not dismissed because his compensation for the next five years was "indefinite;" his claim was dismissed because the Board retained *complete* discretion over the amount of his compensation in future years. [R. 20-21].

Erwin rhetorically asks why the Phillips court would have "walked through the documents and deposition testimony" if the issue could be decided "solely by reference to the four corners of the contract." Appellant's Brief, p. 16. The answer is simple, the Phillips court walked through the facts of the case because the case was decided on summary judgment and the facts were a part of the record. This

does not imply that these cases can *only* be decided on summary judgment, or that facts concerning the parties' post-contract conduct is relevant when the future compensation is determined "at least in part … by a future exercise of discretion." Arby's at 242. In fact, despite "walking through the facts," the Phillips court ultimately held that the parol evidence was irrelevant. Phillips at 187 ("Although Phillips strongly argues that the December 2013 agreement provided a formula for calculating compensation, in his brief in the trial court, Phillips admitted that the firm retained some discretion in how compensation would be calculated.")

The same rationale was the basis of the decision in Arby's. Following a recitation of the facts, the court held that the promise of future compensation was unenforceable because it was "at least in part" determined by a future exercise of discretion. Arby's at 241 ("Certain evidence in the instant case shows that the bonuses were partially based on a formula. Nevertheless, viewed in the light most favorable to the verdict, the evidence demonstrates that the amount of Cooper's bonuses was to be based, at least in part, on the discretion of the president of Arby's, Inc.") The same rationale was also the basis of the decision in VanRan Commc'ns Servs., Inc. v. Vanderford, 313 Ga. App. 497, 499 (2012) ("Because the payment of a bonus and the amount thereof were discretionary, any promise to pay a bonus was unenforceable."); c.f. Dye v. Mech. Enterprises, Inc., 308 Ga. App.

311, 314 (2011) ("However, in this case, it appears to us that there was no element of discretion concerning whether Dye would be paid a commission.")

In summary, Article IV, A, of the Contract does not contain an enforceable promise of future compensation. The Contract's passing reference to Erwin's "current salary" is not a promise to maintain that salary, nor does it provide a formula from which Erwin's future compensation could be "definitely and objectively ascertainable" outside of the discretion of the Board. Instead, Article IV, A, merely established Erwin's "current" salary for 2019, and provided that the Board retained full discretion in determining Erwin's salary "at any given time" thereafter. Therefore, Article IV, A, of the Contract cannot be construed as an enforceable promise of future compensation, and the trial court properly held that the Housing Authority is entitled to judgment on the pleadings as a matter of law.

C. The Trial Court Did Not Err in Concluding that the Housing Authority is Prohibited from Entering into Unreasonable Multi-Year Employment Contracts.

Erwin's second enumeration of errors contends that the trial court erred in holding that Article IV, A, of the Contract was void as a matter of law because it would have tied the hands of the *current* Board with respect to *future* budgetary and employment matters. Appellant's Brief, p. 21.

1. The Trial Court Correctly Concluded that Erwin's Construction of the Contract Would Render it Void and Unenforceable as a Matter of Law.

With the notable exception of statutorily created merit systems,[2] public officials in Georgia do not have the legal authority to enter into multi-year employment contracts under terms that would render it cost prohibitive for successive public officials to terminate and replace such employees at will. See City of McDonough v. Campbell, 289 Ga. 216, 217-18 (2011), citing Marlowe v. Colquitt County, 278 Ga. App. 184, 186 (2006); accord City of Decatur v. DeKalb County, 289 Ga. 612, 614 (2011); Johnson v. Fulton County, 235 Ga. App. 277, 279 (1998) ; Brown v. City of E. Point, 246 Ga. 144, 146 (1980).

In Campbell, for example, the Supreme Court held that a one-year $55,432 severance agreement with a city building inspector by the former city council was "ultra vires and void" because it rendered the cost of terminating the contract by newly-elected officials "exorbitant." Campbell at 217-18. Here, if Erwin's construction of the Contract is embraced, then the Contract will be deemed to guarantee five (5) years of salary at a minimum of $109,219 per year. [R. 130]. That makes the present scenario (and corresponding contract) far more exorbitant that the contract that was declared ultra vires and void in Campbell.

[2] See Brown v. City of E. Point, 246 Ga. 144, 145-46 (1980).

Membership on a housing authority board is not a lifetime appointment. Board members are appointed by city council members for fixed terms of office, O.C.G.A. § 8-3-50 (c), and they may not subvert this statutory limitation on their powers by entering into long term contracts that tie the hands of future board members. As the Court noted in Smith v. Ouzts, 214 Ga. 144, 146 (1958), "***[o]bviously*** … any contract which controls or restricts the discretion vested in a public officer or public body is contrary to public policy and void.") (Emphasis added.) The current members of the Housing Authority Board have the statutory discretion to hire an executive director of their choosing,[3] and, therefore, any contractual limitation on that discretion by their predecessors would be ultra vires and void as a matter of law.

2. The Rule that One Council May not Bind Itself or its Successors Applies to Housing Authorities and Employment Contracts.

Erwin contends that the rule expressed in O.C.G.A. § 36-30-3 (a) ("One council may not, by an ordinance, bind itself or its successors so as to prevent free legislation in matters of municipal government") is inapplicable to the Contract at

[3] O.C.G.A. § 8-3-51 (c) ("An authority shall select from among its commissioners a vice-chairman; and *it may employ a secretary (who shall be executive director)*, technical experts, and such other officers, agents, and employees, permanent and temporary, as it may require; and it shall determine their qualifications, duties, and compensations.") (Emphasis added.)

issue here because the Board is not a "council," the Contract is not an "ordinance," and the Contract would not prevent the Board from "legislating freely." For the reasons discussed below, Erwin is wrong on all three counts.

As an initial matter, the rule against binding subsequent councils "applies equally to both the enactment of ordinances and the execution of governmental contracts." Campbell, at 217; accord Marlowe, City of Decatur, Johnson, and Brown, *supra*. Furthermore, each of the above-cited cases concluded that the enforcement of an exorbitant long-term employment contract would prevent the governmental body in question from "legislating freely." See Campbell, at 217-18 (concluding that the intent of this rule is to protect the ability of subsequent public officials to "legislate freely in matters such as operating budgets.") See also Wilson v. Southerland, 258 Ga. 479, 480 (1988) ("The appropriating process is a legislative function and the law prohibits a local governing authority from binding itself or its successors so as to prevent free legislation.")

Furthermore, it is now well-settled that the rule against "binding subsequent councils" is not limited to cities or city "councils." Despite the fact that this rule has been codified with respect to municipalities in O.C.G.A. § 36-30-3 (a), the Georgia Supreme Court has held that this rule is also generally applicable to ***all*** legislative or governmental bodies, which would necessarily include housing

authorities.[4] Madden v. Bellew, 260 Ga. 530, 531 (1990) ("This rule is not of statutory origin, and is not peculiar to Georgia. It is a codification of a principle stated in Williams v. West Point, 68 Ga. 816 (1882), which is applicable generally to legislative or governmental bodies.")

Erwin cites City of Jonesboro v. Clayton County Water Auth., 136 Ga. App. 768, 773 (1975) for the proposition that "there is no basis for the assertion that [O.C.G.A. § 36-30-3] applies to authorities," but Jonesboro has since been overruled on this point. Importantly, the Jonesboro court concluded that the rule against binding subsequent councils was inapplicable to "authorities" because the plain text of Code Ann. § 69-202, the predecessor to O.C.G.A. § 36-30-3 (a), applied exclusively to "municipalities" by its own terms. Id. at 774-75. That rationale – i.e., the belief that the rule does not apply to housing authorities because the codification of the rule refers exclusively to "municipalities" – was explicitly rejected by the Supreme Court in Madden where it was held that the rule applied generally to *all* governmental bodies. Madden, at 531. The Housing Authority is a

[4] See O.C.G.A. § 8-3-30 (a) "A [housing] authority shall constitute a public body corporate and politic exercising public and essential governmental functions…."; see also Culbreth v. Sw. Ga. Regional Housing Auth., 199 Ga. 183, 189, 33 S.E.2d 684, 688 (1945) ("Since the Housing Authority is thus a public corporation, and is using this property exclusively for a declared public and governmental purpose, and not for private or corporate benefit or income, it is in effect an instrumentality of the State, and therefore the property is exempt from taxation to the same extent as if the legal title thereto was in the State itself or in a county or city.")

governmental body and, therefore, the rule against binding subsequent councils applies. Granted, the Georgia Supreme Court has not taken the opportunity to apply this rule to authorities in general, or to housing authorities in particular, but there is no need for the Court to do so when the Court has already definitively pronounced that it applies "generally to legislative or governmental bodies." Madden at 531.

Therefore, assuming *arguendo* that Article IV, A, did contain an enforceable promise of a guaranteed minimum future compensation, and assuming that the Contract guaranteed Erwin's employment for a rolling five-year term at a minimum salary of at least $109,219 per year as Erwin contends, the trial court did not err in holding that Article IV, A, would still be void as a matter of law because it would have tied the hands of the *current* Board with respect to *future* budgetary and employment matters.

D. The Trial Court Did Not Err in Awarding the Housing Authority's Attorney's Fees Under the Surviving Terms of the Contract.

Finally, Erwin contends that the Housing Authority would not be entitled to recover attorney's fees in the event that it was the "prevailing party" in this lawsuit. Under Erwin's theory, the severability clause in the Contract must be void if the remainder of the Contract is declared void as an illegal attempt to bind subsequent councils.

Erwin cites Capricorn Sys., Inc. v. Pednekar, 248 Ga. App. 424 (2001) in support of this claim, but Capricorn held just the opposite. Specifically, the court held in Capricorn that "[t]he intent of the parties determines whether the entire contract is void if one provision is void." Id. at 428. As in this case, that intent may be manifested in the form of a severability clause. Id. In other words, contrary to Erwin's claim, parties to a contract are at liberty to agree that one or more provisions of a contract will survive in the event that the remainder of a contract is declared void, and they explicitly did so in this case.

Furthermore, it is not true that the trial court should have determined that the *entire* Contract was *ultra vires* when one provision was merely unenforceable and the Housing Authority lacked the legal authority to offer the specific terms that Erwin alleges the Housing Authority offered. Instead, either Article IV, A, does not contain an enforceable promise of future compensation, *or* Article IV, A is void as an improper attempt to bind the hands of a subsequent Housing Authority Board. In either case, the manifest intent of the parties was that the remainder of the Contract would be severable, and that the "prevailing party" in any action to enforce the Contract would be entitled to recover costs and attorney's fees.

Therefore, regardless of whether Erwin's claims were dismissed on one or both of the grounds outlined above, the Housing Authority is the "prevailing party" under the terms of the Contract and entitled to an award of its attorney's fees.

Therefore, the trial court did not err in awarding the Housing Authority its attorney's fees under the surviving terms of the Contract.

III. CONCLUSION

For the reasons outlined above, the Housing Authority respectfully requests that this Court affirm the trial court with respect to all Enumerations of Error.

This submission does not exceed the word count limit imposed by Rule 24, as extended by the Court.

Respectfully submitted this 19th day of January, 2023.

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CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that he has served a copy of the within and foregoing BRIEF OF APPELLEE upon all parties to this matter electronically by email and by depositing a copy of same in the United States Mail, proper postage prepaid, addressed to counsel of record as follows:

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