

By: Eiland

H.C.R. No. 101

HOUSE CONCURRENT RESOLUTION

1 WHEREAS, Mike Leach alleges the following.

2 WHEREAS this case involves a dispute between Texas Tech
3 University and Leach, its former head football coach, over the
4 termination of his employment.

5 WHEREAS Texas Tech University executed a contract of
6 employment with Leach effective January 1, 2009 (the "Agreement"),
7 contracting to retain Leach's services as Head Football Coach of
8 the University's Division 1 football program for a term of five
9 years.

10 WHEREAS the Agreement incorporates Texas Tech University's
11 policies and procedures as terms of the contract, and provides that
12 Leach is entitled to the benefits of Texas Tech University's
13 policies and procedures. Among other things, the TTU Operating
14 Procedures ("OP") provide that an employee aggrieved by an
15 employment decision of the University may appeal that decision
16 through a grievance proceeding without fear that the University
17 will retaliate.

18 WHEREAS at Coach Leach's election, that proceeding could
19 take the form of a civil lawsuit:

20 In the event the employee files substantially the same issues as the
21 grievance or complaint before or during this procedure with any
22 external agency or court, the employee may elect to remove such
23 issues of grievance or complaint from further consideration through
24 this process.

1 WHEREAS these policies were established under a direct grant
2 of authority by the Texas Legislature.

3 WHEREAS the Employment Agreement contains certain provisions
4 limiting termination by Texas Tech University, including a
5 termination without cause provision, a termination for cause
6 provision, and a notice and cure provision.

7 WHEREAS on December 28, 2009, Leach received a letter
8 suspending him as head football coach of Texas Tech University.

9 WHEREAS Leach's attorney sought a temporary restraining
10 order in the District Court of Lubbock County as allowed by Texas
11 Tech OP 70.10 to complain of Defendant's actions and failure to
12 accord Leach due process, and to complain of Texas Tech's breach of
13 his contract.

14 WHEREAS on December 30, 2009, representatives of Texas Tech
15 handed Leach's counsel a letter of termination advising Leach that
16 he was terminated from his employment for cause effective December
17 30, 2009.

18 WHEREAS in firing Leach, Texas Tech University invoked the
19 "with cause" provision of his contract. As a result, the University
20 has refused to pay him the compensation, including bonuses to which
21 Leach was or would have been entitled and certain guaranteed income
22 it owes under the Agreement.

23 WHEREAS Texas Tech University, has still yet to pay Leach for
24 his completed services during the 2009 football season, including a
25 payment due under the Employment Agreement for \$1.6 million as
26 "Guaranteed Outside Income."

27 WHEREAS though Leach followed Texas Tech University's

1 required procedure to address grievances under the Employment
2 Agreement, he has never been able to fully adjudicate his claims
3 against Texas Tech University. Leach has been prohibited by Texas
4 Tech University's protection under sovereign immunity. Leach
5 alleges that Texas Tech University breached its contract by, among
6 other things, suspending him without any process or contractual
7 basis, failing to give Coach Leach notice as required under his
8 contract and a reasonable opportunity to cure, and allegedly
9 terminating him for cause when no good cause exists. In addition,
10 because the procedural safeguards, including an appeal, are a term
11 and condition of Coach Leach's employment, termination without
12 permitting such appeal constitutes a breach of contract.

13 WHEREAS if successful in proving his allegations against
14 Texas Tech University, Mike Leach is entitled to an award of actual
15 damages for breach of contract, which may include consequential,
16 special and incidental damages, and is also entitled to reasonable
17 attorney fees, interest on past damages, and costs of suit as may be
18 authorized by law.

19 WHEREAS the damages that Mike Leach seeks shall not include
20 tort damages or punitive damages. Nor does Leach seek permission to
21 sue any individual official of Texas Tech University for any cause
22 of action. By this resolution, Mike Leach does not seek
23 authorization or permission to join any other agency, institution
24 or university of the State of Texas in this or any other lawsuit.

25 WHEREAS Mike Leach, if successful, shall initially seek to
26 satisfy the judgment from non-appropriated funding sources
27 available to the Texas Tech University Athletic Department. Any

1 attempt to satisfy the judgment from appropriated state funds shall
2 require separate approval of the State Legislature.

3 WHEREAS the Seventh Court of Appeals of Texas ruled that
4 Texas Tech University had not waived its protection from suit under
5 sovereign immunity and that the Legislature of the State of Texas
6 was the only proper entity to waive such sovereign immunity.

7 RESOLVED by the 82nd Legislature of the State of Texas, That
8 Mike Leach is granted permission to sue Texas Tech University for
9 breach of contract.; and be it further

10 RESOLVED, That, Guy Bailey at the Office of the President of
11 Texas Tech University, as a representative of Texas Tech University
12 and the Attorney General of the State of Texas be served with
13 process as provided by Section 107.002 of the Texas Civil Practices
14 and Remedies Code.