FIFTH DISTRICT COURT OF APPEAL
STATE OF FLORIDA

Case No. 5D2023-3275
LT Case No. 2023-CA-001308

HERNANDO BEACH MARINE
GROUP, INC.,

Appellant,

v.

HERNANDO COUNTY, FLORIDA,

Appellee.

On appeal from the Circuit Court for Hernando County.
Pam Vergara, Judge.

Ronald W. Sikes and Ashley L. Malans, of Sikes Law Group, PLLC, Winter Garden, for Appellant.

Kyle J. Benda and Jon A. Jouben, Brooksville, for Appellee.

June 28, 2024

PER CURIAM.

AFFIRMED. *See Fla. Highway Patrol v. Jackson*, 288 So. 3d 1179, 1185 (Fla. 2020) ("[B]ecause sovereign immunity includes immunity from suit, entitlement to sovereign immunity should be established as early in the litigation as possible."); *Arnold v. Shumpert*, 217 So. 2d 116, 120 (Fla. 1968) (holding that "[a] county is a division of the state" and that "[i]t enjoys the state's sovereign

immunity unless the Legislature by a general law provides otherwise" (citing *Keggin v. Hillsborough County*, 71 So. 372, 372 (Fla. 1916))); *Pan-Am Tobacco Corp. v. Dep't of Corr.*, 471 So. 2d 4, 6 (Fla. 1989) (holding that the waiver of sovereign immunity applies "only to suits on express, written contracts"); *County of Brevard v. Miorelli Eng'g, Inc.*, 703 So. 2d 1049, 1051 (Fla. 1997) (declining "to hold that the doctrines of waiver and estoppel can be used to defeat the express terms of the contract[;] [o]therwise, the requirement of *Pam Am* that there first be an express written contract before there can be a waiver of sovereign immunity would be an empty one"); *Heine v. Fla. Atl. Univ. Bd. of Trs.*, 360 So. 3d 412, 420 (Fla. 4th DCA 2023) (stating that there is no waiver of sovereign immunity "for claims in equity" and that the State enjoys "sovereign immunity from quasi-contractual claims such as unjust enrichment" (citations omitted)); *Dist. Bd. of Trs. of Miami Dade Coll. v. Verdini*, 339 So. 3d 413, 417 (Fla. 3d DCA 2022) (providing that a State entity's entitlement to sovereign immunity "may properly be considered on a motion to dismiss" (citation omitted)); *Vorbeck v. Betancourt*, 107 So. 3d 1142, 1148 (Fla. 3d DCA 2012) (recognizing as well-settled that the rule of preservation applies to the alleged improper dismissal of a complaint with prejudice (quoting *Jelenc v. Draper*, 678 So. 2d 917, 918 n.1 (Fla. 5th DCA 1996))).

LAMBERT and EISNAUGLE, JJ., concur.
MAKAR, J., concurs with opinion.

Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.

MAKAR, J., concurring.

An express written contract exists between the parties, but Appellant has not shown that either the terms of the written contract or a subsequent modification, buttressed by some documentation (e.g., emails, amendments, etc.), undergirds the disputed claims. Were Appellee a non-governmental body, the claims would be actionable against it; Appellant and Appellee don't have an agreement with the requisite mutuality to establish enforceability as to the claims alleged. Moreover, Appellant does not identify an implied covenant in the written contract it seeks to enforce; if such a covenant were shown, and it did not relate to work outside the parameters of the contract, it might have been enforceable. *See County of Brevard v. Miorelli Eng'g, Inc.*, 703 So. 2d 1049, 1051 (Fla. 1997) ("Binding the sovereign to the implied covenants of an express contract is quite different from requiring a sovereign to pay for work not contemplated by that contract."). Finally, Appellant did not object to dismissal of its claims with prejudice; had it objected and put forth some additional documentation underlying the claims, and tied them to the existing written agreement, reversal would be warranted to allow for amendment to the initial complaint. Florida caselaw doesn't make clear whether this manner of modification to an existing written agreement is sufficient to waive sovereign immunity, but logic dictates that it would be if contractual prerequisites are met. As such, affirmance is warranted.