

Baum Research & Dev. Co. v. Univ. of Mass. at Lowell

No. 06-1330, Federal Circuit (Newman,* Friedman, Moore)

[Where] the contract terms are clear, and [the] University agreed to submit to the jurisdiction of a federal court [as] to disputes arising from this contract [the] University thereby waived its Eleventh Amendment immunity.

On October 10, 2007, the Federal Circuit, on interlocutory review, affirmed the district court's judgment that the University waived its Eleventh Amendment immunity by expressly agreeing to federal jurisdiction in a license agreement, which related to two patents for a device for testing baseball bats of varying construction. The Federal Circuit stated:

The Eleventh Amendment limits the judicial authority of the federal courts and bars unconsented suit against a state in federal court. . . . The district court held that immunity as to this contract was expressly waived by specific provision of the contract. [A] state waives its immunity when it clearly declares its intention to submit to federal jurisdiction, but the intention must be "unequivocally expressed." General consent provisions standing alone, such as general sue-and-be-sued clauses, have been held insufficient to waive Eleventh Amendment immunity

The district court, hearing the University's arguments both before and after trial, and carefully exploring the contract's terms in light of precedent, ruled that "by agreeing to this provision [III-3], Defendant affirmatively agreed to resolve in federal court any disputes that may arise." The court considered the University's arguments that the contract is ambiguous, and did not agree. We agree with the district court that the contract terms are clear, and that the University agreed to submit to the jurisdiction of a federal court in Michigan as to disputes arising from this contract. Although the University argues that the contract does not state which court is "appropriate" as to which cause of action as may arise, this does not negate the agreement to submit to the jurisdiction of the appropriate court. . . . We affirm the district court's ruling that the contract between Baum and the University is not ambiguous as to the mutual obligation to submit to jurisdiction of the state and federal courts in Michigan, and that the University thereby waived its Eleventh Amendment immunity.

The University states that even if the contract obligated it to submit to federal jurisdiction, neither the University nor its Associate Director who executed the contract had authority to enter into a contract that waived [the state's] Eleventh

Amendment immunity. The University acknowledged in the district court that its contract with Baum was entered into in accordance with the authority granted to the University trustees However, the University argued that this authority to enter into contracts and to provide for the resolution of disagreements does not include the authority to waive Eleventh Amendment immunity in performing these functions. The University states that only the Massachusetts legislature can waive the state's immunity. In the district court the University argued that the University could not waive its state immunity, and at the argument of this appeal the University stated that explicit legislative waiver, contract by contract, would be required to achieve an enforceable waiver. The University's position is that since it is entitled to assert state immunity, it cannot waive it.

The district court did not accept the University's apparent position that it acted beyond its authority in including this provision in the patent license agreement with Baum. The argument is presented on this appeal without any support in the record, with no state-produced document stating that the University and its officials did not act in accordance with the law. Although "the Eleventh Amendment defense sufficiently partakes of the nature of a jurisdictional bar so that it need not be raised in the trial court," the record contains no representation by the State of Massachusetts that its University had no authority to enter this contract. Director Griffin testified that the University has entered into, and she has executed for the University, hundreds of contracts containing this provision; the University did not attempt to impugn her authority to do so on behalf of the University.

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