

No. 14-25-00579-CV

**In the Court of Appeals
for the Fourteenth District of Texas**

HARRIS COUNTY, TEXAS,
Appellant
v.

AMBASSADOR SERVICES, LLC
Appellee

Appeal from the 125th District Court, Harris County, Texas
Trial Court Case No. 2024-86128

REPLY BRIEF OF APPELLANT HARRIS COUNTY

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ORAL ARGUMENT REQUESTED

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RECORD AND PARTY REFERENCES AND CITATIONS

Appellees use the following references, with specific page numbers in brackets, unless otherwise noted.

Record References

The Clerk's record consists of one volume, referenced as follows:

Clerk's Record, filed July 23, 2025

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TO THE HONORABLE JUSTICES:

Appellant Harris County, Texas, files this Reply Brief and respectfully represents as follows.

RESPONSE TO AMBASSADOR’S STATEMENT OF FACTS

Ambassador makes three assertions in its Statement of Facts that are unsupported or contradicted by the record and significant enough to merit a response. See Ambassador Brief at 1-4.

I. The record does not show that Ambassador had a construction contract.

Ambassador claims its contract with Harris County was for “both routine cleaning and construction-related restoration and maintenance services.” Ambassador Brief at 1, citing C.R.270-277; C.R.342-351; C.R.370. Ambassador’s record citations do not support this.

Ambassador first cites its First Amended Petition, which alleges that it cleaned buildings after others performed construction work by engaging in “construction *debris removal*,” “post-construction *cleaning*,” and “coordinating construction teams regarding access, *cleaning schedules*, or protection of areas undergoing renovation.” See Petition at C.R.272 (emphasis added). Even if true, cleaning up after construction occurred or arranging access when construction was not occurring is not a construction restoration or maintenance contract.

Ambassador also supports this factual allegation by citing its “General Standards and Cleaning Specifications” (C.R.342-351) and the pricing chart for cleaning each of Harris County’s downtown buildings (C.R.370). None of these documents uses the word “construction” or references any construction work by Ambassador, and these citations do not support Ambassador’s factual assertion.

II. The record contradicts Ambassador’s claim that Harris County required it to post a construction bond.

Ambassador claims “Harris County required Ambassador to post a public works construction bond under Texas Local Government Code § 262.032—a bonding requirement specifically designated for the construction of public works which was renewed annually for five years.” Ambassador Brief at 1, citing C.R. 272; C.R. 279-281; C.R. 304-306; C.R. 320-321; C.R. 333; C.R.306-321.

To support this, Ambassador cites the portion of its petition alleging that it posted a construction bond (C.R.272), the first three pages of the Commissioners Court request for approval of Ambassador’s contract (C.R.279-281), the contract signature pages (C.R.304-306), a checklist requiring that Ambassador maintain workers compensation insurance (C.R.320-321), various addendums, questions, and answers (C.R.306-321), and the first page of the Specifications (C.R.333). None of these documents establishes that Ambassador posted a construction bond.

To the contrary, the record shows that Ambassador did not post a

construction bond for a public works project. Ambassador posted a Performance Bond for “**Custodial services at various downtown locations in region 5.**” C.R.520 (emphasis in original). Further, Texas Local Government Code § 262.032 is not “a bonding requirement specifically designated for the construction of public works...” as Ambassador claims. Ambassador Brief at 1. The statute is also for any “contract exceeding \$100,000,” such as Ambassador’s cleaning contract. Tex. Loc. Gov’t Code § 262.032(a). A copy of Ambassador’s Performance Bond is reproduced in the Argument section below, along with a discussion of its legal significance.

III. The record does not support Ambassador’s claim that Harris County “refused to honor” its demand for a 6.52 percent price increase.

Finally, Ambassador claims Harris County “refused to honor” its demand for a 6.52 percent price increase. Harris County paid all of Ambassador’s invoices during the term of the contract, but Ambassador chose not to seek a price increase in the last year. After the contract ended and Harris County began paying a new vendor, Ambassador suddenly decided it wanted the increase retroactively and demanded that Harris County appropriate funds from the following year to repay invoices from the prior year. This has no bearing on Harris County’s immunity, but merits clarification.

RESPONSE TO AMBASSADOR'S ARGUMENT

I. Harris County retains immunity because there is no written construction contract as required by Tex. Loc. Gov't Code § 262.007.

The parties agree that Ambassador's suit must be dismissed unless Ambassador can establish that it had a contract for construction services under Texas Local Government Code § 262.007. Ambassador Brief at 11-12 ("Ambassador does not dispute that Harris County enjoys immunity from breach of contract claims in other subject areas..."). The record is clear that Ambassador's contract was for cleaning services. See, e.g., C.R.535 ("Contractor agrees to furnish custodial cleaning services..."); C.R.566-567 (Ambassador was paid based on "the square footage to be cleaned"); C.R.568-571 (Details about the scope of work); C.R.587-625 (Contract specification for "custodial service"); C.R.718 (Ambassador letter identifying the scope of its work as "Janitorial Services/Cleaning").

Try as it might, Ambassador cannot convert a cleaning contract into a construction contract, and this single fact is dispositive of the case. Even if Ambassador had performed some construction services, Texas Local Government Code § 262.007 clarifies that immunity is only waived when the construction contract is written. Tex. Loc. Gov't Code § 262.007.

Because Ambassador has no written construction contract, it argues that the Court should disregard "[t]he existence of contractual language regarding cleaning

operations” and look to what its employees actually did. Ambassador Brief at 23. Ambassador is incorrect as a matter of law, and the Legislature drafted § 262.007 to require that construction contracts be in writing to avoid exactly this scenario. A party cannot sign a contract for janitorial services, then ambush a local government by providing a few alleged “construction” services to unilaterally waive the government’s immunity. Ambassador has no written contract for construction services, and that is the end of the analysis.

II. Ambassador failed to establish that its employees engaged in construction work or that any portion of its \$117,621 demand is for construction.

Even if Ambassador could “partially” rewrite its janitorial contract to conform to what it believes its employees did, the record establishes that Ambassador never performed any construction services. “Construction” is “the work of building or making something, especially buildings, bridges, etc.”¹ Ambassador provided no alternative definition and made no attempt to argue that it met this definition by building or making anything. Ambassador Brief at 25.

Ambassador was not hired to construct anything and had no employees, equipment, invoices, permits, or permission to do so. See Harris County Brief at 22-

¹ Harris County Brief at 24, quoting “Construction.” *The Cambridge Dictionary*, 2025. <https://dictionary.cambridge.org/dictionary/english/construction> (Retrieved September 8, 2025).

33. Ambassador claims to have performed construction services by cleaning up after other contractors who performed construction services. Ambassador Brief at 23. However, cleaning up after work is done is not the same as doing the work.

The closest Ambassador comes to identifying any act of construction is to claim the Bureau of Labor Statistics defines painters as construction workers and to say that its employees painted “floors with finish.” Ambassador Brief at 22. That is also known as waxing a floor.

The first problem with this argument is that it runs contrary to Ambassador’s own contract, which defines floor finishing as “the cleaning and applying of finish to hard floor surfaces per [cleaning] industry standards.” C.R.81. The contract defines “floor stripping and refinishing” under Section 2.2, which is titled “**Cleaning Operations**” and discusses “routine, periodic, interim, and restorative cleaning operations for floors and carpets.” C.R.123-124 (emphasis in original). The record is consistent in establishing that Ambassador was not hired to paint floors, but rather to sweep, mop, and apply wax/finish to floors as part of the cleaning process.² That

² The word “sweep” appears 54 times, the word “mop” appears 80 times, and the word “wax” appears 213 times in the record. In contrast, “paint” appears only once—where Ambassador acknowledged being aware of potentially hazardous materials such as lead paint. C.R.391, fn.3.

is not construction, and it does not waive Harris County's immunity.

Second, Ambassador never hired painters, was not authorized to hire painters, and never classified its employees as painters. It never tied its price increases to the cost of painters or other construction employees. It never purchased paint, paint brushes, painter's tape, painter's suits, paint sprayers, paint mixers, or painter's cloth or tarps. It never coordinated paint color with Harris County and never received permission to paint any floors. The fact that Ambassador could believe that waxing a floor is the same as painting reinforces why Ambassador was not hired for a construction contract.

Finally, even if the Court overlooked all of the above, Ambassador could still not recover damages. Ambassador seeks recovery for a "partial" construction contract. Ambassador Brief at ix & 29. Even if the Legislature had waived immunity for unwritten, partial construction contracts, Ambassador never pleaded or provided facts to show which "part" of the \$117,621 for urban and clerical worker wage increases is attributed to construction and which "part" is attributed to cleaning. See *City of Anson v. Harper*, 216 S.W.3d 384, 394 (Tex. App.—Eastland 2006, no pet.) ("plaintiffs must establish a clear and unambiguous waiver of governmental immunity for each claim asserted by them."). Thus, even if Ambassador's claim were legally permitted, Ambassador failed to properly plead damages.

III. Ambassador posted a performance bond because its contract exceeded \$100,000—not because it had a construction contract.

Ambassador also claims that Harris County waived immunity by asking Ambassador to post a bond under Texas Local Government Code § 262.032. Ambassador Brief at 7 & 18-19. Ambassador incorrectly claims that § 262.032 only applies to contracts for public works. Ambassador Brief at 1 & 18-19. However, the statute clearly applies to all contracts exceeding \$100,000:

- (a) If the contract is for the construction of public works or is under a contract exceeding \$100,000, the bid specifications or request for proposals may require the bidder to furnish a good and sufficient bid bond in the amount of five percent of the total contract price.

Tex. Loc. Gov't Code § 262.032(a). Ambassador's contract is for \$18.5 million, and because this exceeds \$100,000, Harris County was permitted to require a performance bond. As a good steward of public funds, Harris County required Ambassador to post this bond.

This is reinforced by the checklist reproduced in Ambassador's brief, which shows that Harris County requires a "Performance Bond" for "certain bids/proposals." Ambassador Brief at 20, citing C.R.321. The checklist notes that every contract "over \$100,000 must also have a Performance Bond." C.R.321.

Ambassador ignored not only the relevant part of § 262.032, but also the actual bond that it posted. Ambassador's bond is captioned "PERFORMANCE BOND"

and clearly identifies that it is for: “**Custodial services at various downtown locations in region 5.**” C.R.520 (capitalization and emphasis in original). The top portion of the bond is reproduced:

PERFORMANCE BOND
Pursuant to Local Government Code 262.032.

STATE OF TEXAS
COUNTY OF HARRIS

KNOW ALL MEN BY THE PRESENTS:

That Ambassador Services, LLC address: 11710 North Freeway, #100, Houston, Texas 77060 phone: (713) 535-9092, hereinafter called the Principal; and SureTec Insurance Company address: 9737 Great Hills Trail, Suite 320, Austin, Texas 78759 phone: 866-732-0099, a corporation; existing under and by virtue of the laws of the State of Texas and authorized to do an indemnifying business in the State of Texas, and whose principal office is located in the City of Austin State of Texas, whose registered agent residing in the State of Texas, authorized to accept service in all suits and actions brought within said State, is (name): Brent Beaty address: 2103 CityWest Boulevard, Suite 1300, Houston, Texas 77042 hereinafter called Surety, are held and firmly bound unto the County of Harris, State of Texas, in the full sum of **Two Million Nine Hundred Ten Thousand Seven Hundred Fifty-Eight Dollars (\$2,910,758)** for the payment whereof, the said Principal and Surety bind themselves, and their heirs, administrators executors successors and assigns, jointly and everally, firmly by these presents. WHEREAS, the Principal has entered into a certain written contract with the Obligee, dated the 7 day of April, 2020 to:

Job No. 16/0032 (renewal), **Custodial services at various downtown locations in region 5**

C.R.520 (highlighting added). Ambassador’s attempt to use this bond to show that it had a construction contract proves the opposite. Rather than post a construction bond for public works projects, Ambassador posted a Performance Bond for non-public works projects. Ambassador cannot represent that its bond was “specifically designated for the construction of public works.” Ambassador Brief at 1. Even if Harris County had misidentified this as a “construction” bond and required Ambassador to post it, that would still not have waived immunity under Texas Local Government Code § 262.007, because a bond is not a written construction contract.

IV. Harris County's requirement that Ambassador have insurance does not convert this into a construction contract.

Ambassador also incorrectly claims that Harris County's decision to require workers compensation insurance converted its janitorial contract into a construction contract. Ambassador Brief at 8 & 24-25. Harris County's Purchasing Department has a checklist requiring vendors to maintain minimum insurance. C.R.320-321. The checklist gave two examples where workers compensation insurance is required: (1) a contract involving Harris County buildings or (2) a contract for construction. C.R.321.

Ambassador's contract involved cleaning buildings, and workers compensation insurance protects the worker and the parties if a janitor is injured on the job. Thus, it is logical for Harris County to require workers compensation insurance from its cleaning companies. While workers compensation coverage is required for all construction contracts, nothing prevents Harris County from requiring it for other contracts as well. C.R.377 ("The County reserves the right to require additional insurance if necessary.") The fact that Harris County required Ambassador to have workers compensation insurance does not transform Ambassador's janitorial contract into one for construction services.

V. The Prompt Payment Act does not apply because there is no enabling statute in this case.

As Harris County explained in its brief, the Prompt Payment Act is not a stand-alone provision and “does not create an independent obligation to pay monies not otherwise owed under the Contract.” *County of Galveston v. Triple B Services, LLP.*, 498 S.W.3d 176, 187 (Tex. App.—Houston [1st Dist.] 2016, pet. denied). Thus, to utilize the Prompt Payment Act, Ambassador must first show that it was entitled to payment under a construction contract for which immunity was waived.

Ambassador first urges the Court to hold that it can “proceed without a separate enabling statute” (Ambassador Brief at 28). However, to read the Prompt Payment Act in this manner would be to conclude that the Act waives immunity in every contract claim. That is clearly not the case. See, e.g., *Tooke v. City of Mexia*, 197 S.W.3d 325, 328-329 (Tex. 2006).

Later, Ambassador concedes that this Court should apply *Triple B* to find that a Prompt Payment Act claim is “authorized in conjunction with” a viable “breach of contract claim.” Ambassador Brief at 29 (emphasis added). Ambassador acknowledges that its Prompt Payment Act claim depends on immunity being “waived for the underlying claim.” Ambassador Brief at 29. That immunity was not waived because Ambassador did not have a written contract for construction services. Accordingly, Ambassador cannot bring a Prompt Payment Act claim.

CONCLUSION AND PRAYER

Ambassador did not enter into a written contract with Harris County to construct County buildings, and it cannot establish a waiver of immunity under Texas Local Government Code § 262.007. That disposes of this case, and Ambassador is not permitted to waive Harris County's immunity by looking outside the four corners of the contract to speculate about what "construction" work its employees might have done while cleaning.

Even if Ambassador was permitted to use extraneous evidence to turn its cleaning contract into a construction contract, the record does not support its position. The word "sweep" appears 54 times in the record, the word "mop" appears 80 times in the record, and the remainder of the record supports the unambiguous conclusion that Ambassador's employees cleaned—not built—buildings. The only example Ambassador gives of "construction" services is its claim that employees "painted" wax onto floors. However, the contract defines finishing floors as part of the cleaning process (C.R.81; C.R.123-124), and the word "paint" appears only one time in the record—in a footnote where Ambassador acknowledges being aware of the risk of lead paint in old buildings. C.R.391.

Ambassador's most important evidence is its claim to have posted a "public works construction bond under Texas Local Government Code § 262.032—a

bonding requirement specifically designated for the construction of public works which was renewed annually for five years.” Ambassador Brief at 1. However, both the statute and the actual bond establish that this was not a public works construction bond—it was a Performance Bond for “custodial services.” C.R.520.

Ambassador did not meet its burden of showing that the Legislature waived immunity or that it was entitled to recover attorney’s fees and interest under the Prompt Payment Act. Under the *de novo* standard of review, this Court should reverse the district court and render judgment dismissing the claims against Harris County with costs taxed to Appellee.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

The undersigned attorney certifies that this document was produced on a computer and printed in a conventional typeface no smaller than 14-point, except for footnotes, which are no smaller than 12-point. This document complies with the word-count limitation of TEX. R. APP. P. 9.4. Relying on the word count of the computer program used to prepare this document, this brief contains 2,538 words, excluding those sections exempted under TEX. R. APP. P. 9.4(i)(1).

/s/ Seth Hopkins
Seth Hopkins

CERTIFICATE OF SERVICE

I hereby certify that pursuant to TEX. R. APP. P. 9.5, a true and correct copy of the foregoing instrument was served electronically through the electronic filing manager on the 17th day of November, 2025, to the following counsel of record:

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