The parties conceded that the city was acting in a proprietary capacity. In Maryland, that might not have been true, so each state must determine whether operating an airport is a proprietary or a governmental function if the distinction matters in your state. Here it mattered, but even where all agreed that the city acted proprietarily, the question that had never been decided by the North Carolina Supreme Court was whether under the facts of this case immunity extended to equitable remedies. The Fourth Circuit predicted that the North Carolina Supreme Court would not extend immunity on these facts. Inexplicably, North Carolina does not provide for certification of questions from the federal court, so the issue could not be decided by the state's highest court.

The city entered into an agreement with a company to operate certain functions at its airport and entered into a lease with the company for certain parcels at the airport and allowed the company to grant security interests in its leasehold interest to obtain financing. The parties agreed that in the event of the company's default, Hickory had a first right to cure, which would allow Hickory to reclaim the leasehold interest free of any security interests.

The company defaulted on its obligations under the agreement and lease and filed for bankruptcy. The bankruptcy court placed Hickory in possession of the leased premises. The holder of the lien claimed that under the agreement between Hickory and the company, Hickory had to first cure the company's financing obligations before taking possession of the leased premises and demanded that Hickory turnover the rental payments it received from tenants of the airport, which Hickory has refused. The lien holder filed suit against the company and Hickory asserting an action for judicial foreclosure, a demand for accounting, disgorgement of rents, and unjust enrichment. Hickory interposed the defense of immunity claiming that when a municipality acts pursuant to a proprietary function, it waives immunity only for tort and contract claims, not for equitable claims such as unjust enrichment and disgorgement of profits.

The Fourth Circuit reasoned that because (1) North Carolina precedent suggests that the Supreme Court of North Carolina would rule that immunity from equitable claims may be waived pursuant to the proprietary function theory and (2) the rationale behind the theory, as articulated by both the United States Supreme Court and the Supreme Court of North Carolina, is consistent with the waiver of immunity for equitable claims, we hold that the district court did not err in its application of North Carolina state law.

http://www.ca4.uscourts.gov/Opinions/Published/132097.P.pdf (last accessed Dec. 17, 2014)

Brooks v. Jenkins – Value of pets, constitutional torts

Maryland's intermediate appellate court decided a case involving a cap on the value of a pet killed by police officers. The case involves a number of complex facts and issues many of which are associated with Maryland's disjointed interpretation of liability of police officers and sheriff's deputies under the Maryland Constitution and its Tort Claims

Act. Rather than treat all of those issues in this article, we address the issue involving the value of a pet. Breaking with the great weight of authority, Maryland's Court of Special Appeals concludes that a claim involving a constitutional violation does not fall within the state's cap on compensatory damages for the loss of a pet.

The sheriff's deputies having an arrest warrant went to the home of the accused and were met by his cooperative parents. The parents tried to round up their dogs and the facts were disputed as to what happened next other than that all agreed that one of the deputies shot and seriously wounded the Jenkins' dog Brandi. Maryland has a cap on compensatory damages for pets of $7,500. Code (1974, 2013 Repl. Vol.), § 11-110 of the Courts & Judicial Proceedings Article ("CJ"). The jury in the case awarded economic damages to each of Brandi's owners, Mr. and Mrs. Jenkins in the amount of $10,000 and non-economic injuries (mental anguish) in the amount of $100,000 each.

In response to the deputies' arguments that the statute precluded an award above the statutory cap, the court responded "Because pets are property, CJ § 11-110 defines their property value, but it cannot rationally be read to cabin a grossly negligent official's total liability based on the fortuity that he shot a pet rather than something inanimate." In what can only be described as a strained analysis the court likened the deputies' argument to a fact situation where a driver with gross negligence runs a car into a neighbor's garage door destroying it, the car inside and a pet rabbit where the claim is that the statue would limit recovery to $7500 for the loss of the rabbit. "The Deputy's theory of CJ § 11-110 would limit the neighbor's recovery to the bunny's vet bill and preclude any recovery for the much greater damage to the neighbor's car or house." One can only suspect that the Deputy did not make that argument, but rather argued that the constitutional torts the Jenkins asserted for shooting the animal were also limited by the statute. The court ruled otherwise. So, at least in Maryland, the use of excessive force against a pet can subject officers to liability for violating the pet's owner's constitutional rights.

> "We express no views on CJ § 11-110's reach in other circumstances, such as whether it reasonably would be construed to cover veterinary malpractice cases, product liability cases such as Ferrell, or other similar situations. We hold only that it does not limit the Jenkinses' total recovery for the constitutional tort to the capped value of their pet's vet bills."

The constitutional rights involved in this case were those of the Maryland Constitution, federal claims were not included. Because Maryland does not recognize qualified immunities for state constitutional claims, actions that in other states might be brought as federal claims are brought as claims under the Maryland Constitution.

http://www.mdcourts.gov/opinions/cosa/2014/1499s12.pdf (last accessed Dec. 17, 2014)