

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA, FOURTH DISTRICT

GSK Hollywood Development Group, LLC v. City of Hollywood, Florida

246 So. 3d 501 (Fla. 4th DCA 2018) · No. No. 4D16-3453 · Decided May 2, 2018

SUMMARY

The Florida Fourth District Court of Appeal held that a property owner could not maintain a claim under the then-existing version of the Bert J. Harris, Jr. Private Property Rights Protection Act without formally applying for a permit, variance, or other relief. Because GSK Hollywood Development Group did not make such an application before filing suit, the court concluded that the City had not specifically applied the height ordinance to GSK's property and that the claim was not ripe. The court reversed the judgment in GSK's favor and remanded with instructions to enter judgment for the City.

CASE DETAILS

COURT	District Court of Appeal of the State of Florida, Fourth District
WRITING FOR THE COURT	Kuntz, J.; Warner, J.; Conner, J.
JURISDICTION	Florida
DECIDED	May 2, 2018
DOCKET	No. 4D16-3453
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The City appealed and GSK cross-appealed from a final judgment entered after a trial on GSK's claims under the Bert J. Harris, Jr. Private Property Rights Protection Act and for substantive due process violations.
STANDARD OF REVIEW	De novo review applies to the circuit court's ruling on summary judgment and its legal rulings during trial.
PRECEDENTIAL VALUE	published opinion
PARTIES	GSK Hollywood Development Group, LLC v. City of Hollywood, Florida

TOPICS

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QUESTIONS PRESENTED

1. Whether a property owner may maintain a claim under the then-existing version of the Harris Act without formally applying to develop the property or seeking a permit, variance, waiver, or other formal relief.
2. Whether the City's enactment of a generally applicable building-height ordinance, without applying it through a specific development decision concerning GSK's property, constituted an actionable governmental action under the Harris Act.
3. Whether GSK's Harris Act claim was ripe when filed.

HOLDINGS

1. Under the version of the Harris Act governing this dispute, a claim based on building restrictions does not accrue unless the property owner formally applies to develop the property, thereby allowing the governmental entity to specifically apply the law or ordinance to the property.
2. The City's enactment of the generally applicable height ordinance did not constitute the specific application of the ordinance to GSK's property required for a Harris Act claim.
3. GSK's Harris Act claim was not ripe because the City had not taken specific action applying the height ordinance to GSK's property.

KEY QUOTATIONS

“A claim relating to building restrictions under the then-existing version of the Harris act does not accrue unless the property owner formally applied to develop the property; thus, allowing the governmental entity to specifically apply the law or ordinance to the property in question.”

“Because GSK failed to make a formal application to develop the property, the City did not apply the ordinance to the property at issue. Thus, the claim under the Harris Act was not ripe.”

FACTUAL BACKGROUND

GSK purchased two parcels on Hollywood Beach in 2002 to develop a 15-story condominium project. The property was zoned for construction up to 150 feet high, but after opposition from neighboring residents, the City adopted an ordinance reducing the applicable building-height limit to 65 feet. GSK never formally applied for a development permit, height variance, waiver, or other relief; although it later submitted a preliminary site review plan, it informed the City that it would not seek a height variance.

PROCEDURAL HISTORY

GSK sued the City alleging that a 65-foot building-height ordinance inordinately burdened its property under the Harris Act and violated substantive due process. The circuit court entered judgment for GSK on the Harris Act claim and for the City on the due process claim. The City appealed the Harris Act ruling, arguing that GSK's failure to apply for a permit, variance, or other formal relief barred recovery; GSK cross-appealed, but its direct-appeal issues were affirmed without discussion as moot.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Reverse the judgment in favor of GSK and remand with instructions to enter judgment in favor of the City. Issues raised by GSK on direct appeal were affirmed without discussion as moot.

CASES CITED

- *Ionniedes v. Romagosa*, 93 So. 3d 431 (Fla. 4th DCA 2012)
- *14269 BT LLC v. Village of Wellington*, 43 Fla. L. Weekly D166, D167 (Fla. 4th DCA Jan. 17, 2018)
- *City of Jacksonville v. Smith*, 159 So. 3d 888 (Fla. 1st DCA 2015)
- *Citrus County v. Halls River Development, Inc.*, 8 So. 3d 413 (Fla. 5th DCA 2009)
- *M & H Profit, Inc. v. City of Panama City*, 28 So. 3d 71 (Fla. 1st DCA 2009)