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MUNICIPAL ORDINANCE - NORTH CAROLINA

Town of Nags Head v. Toloczko

United States Court of Appeals, Fourth Circuit - August 27, 2013 - F.3d - 2013 WL 4517074

Town brought action in state court against owners of oceanfront cottage, seeking to enforce land-use ordinances and seeking an order of abatement and civil penalties. Action was removed to federal court, and owners filed multiple counterclaims. Town moved to dismiss, owners moved for partial summary judgment, and town moved for leave to file motion for summary judgment. The United States District Court for the Eastern District of North Carolina, James C. Dever III, Chief District Judge, 863 F.Supp.2d 516, abstained from deciding case and declined federal jurisdiction. Owners appealed.

The Court of Appeals held that:

- Federal court was not required to abstain under Burford doctrine from resolving owners' claims for declaratory relief concerning town's authority to ratify and enforce ordinance;
- District court was not required to abstain from deciding cottage owners' claim against town under § 1983 alleging due process and equal protection violations; and
- Court of Appeals would suspend state-litigation requirement for owners' takings claim in interest of fairness and judicial economy.

Because North Carolina has no mechanism for the federal courts to certify questions of state law to its Supreme Court, the federal courts must follow the decision of an intermediate state appellate court unless there is persuasive data that the highest court would decide differently.

District court was not required to abstain under Burford doctrine from deciding cottage owners' claim against town under § 1983 alleging due process and equal protection violations. Although constitutional claim intersected with town's land use and zoning laws, court was not required to define geographical reach of public trust doctrine to resolve constitutional claim.