

Bond Case Briefs

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Bair v. City of Clearwater

District Court of Appeal of Florida, Second District - August 5, 2016 - So.3d - 2016 WL 4150220

Homeowners brought action against city asserting claims of equitable estoppel and relief pursuant to the Bert Harris Act after city issued stop-work order relating to work being done on their home.

The Circuit Court dismissed estoppel claim and granted summary judgment for city on Bert Harris Act claim, and homeowners appealed.

The District Court of Appeal held that:

- Bert Harris Act's waiver of sovereign immunity did not apply to city's issuance of stop-work order;
- Bert Harris Act's waiver of sovereign immunity did not apply to city's reliance on Federal Emergency Management Agency (FEMA) guidelines;
- Even if city had applied regulations from FEMA, homeowners had no cause of action under Bert Harris act;
- Homeowners did not have a cause of action under Bert Harris Act based on city's reliance on flood insurance maps and studies;
- Legislature intended Bert Harris Act to bar claims based on the application of grandfathered legislation; and
- Homeowners' equitable estoppel claim was waived on appeal.

Bert Harris Act's waiver of sovereign immunity did not apply to city's issuance of stop-work order against homeowner's demolition and reconstruction of home, where city did not apply a law, rule, regulation, or ordinance, but merely requested additional information regarding the project, and requested revisions to plans.

Bert Harris Act's waiver of sovereign immunity did not apply to city's alleged reliance on Federal Emergency Management Agency (FEMA) guidelines in issuing stop-work order for work being done on homeowners' property, where city never argued it had the authority to administer or apply FEMA regulations.

Even if city had been delegated authority by Federal Emergency Management Agency (FEMA) to administer and apply FEMA regulations when it issued stop-work order against homeowners, such application did not give rise to cause of action under Bert Harris Act. Actions that inordinately burden real property under the Act did not include a municipality that independently exercised governmental authority when exercising the powers of the United States or any of its agencies.

Homeowners did not have a cause of action under Bert Harris Act based on city's use of flood insurance maps and studies from after Act's enactment in determining that homeowner's property was in a flood zone, and requiring improvements to meet city's flood resistance standards; any reliance on post-enactment portions of the flood standards did not inordinately burden homeowners' property.

Bert Harris Act was not only intended to bar claims of application of an ordinance that occurred prior to Act's enactment date, but was intended to bar claims based on the application of grandfathered legislation after its effective date, and to only allow claims based on newly imposed requirements that were the result of an amendment after Act's enactment date and that inordinately burdened real property.

Whether homeowners were bound by their stipulation that they were asserting a stand-alone equitable estoppel claim against city was waived on appeal, where homeowners failed to argue at trial or in a motion for rehearing that the trial court was precluded from considering stipulation and brought the issue up for the first time on appeal.