
MUNICIPAL CORPORATIONS - ILLINOIS

145 Fisk, LLC v. Nicklas

United States Court of Appeals, Seventh Circuit - January 26, 2021 - 986 F.3d 759

Developer brought § 1983 action against city manager, alleging manager sought to retaliate against developer in violation of its First and Fourteenth Amendment rights by terminating city's preliminary agreement with developer to allocate development incentive funds for hotel development project.

The United States District Court dismissed action. Developer appealed.

The Court of Appeals held that:

- Actions of attorney member of developer in prior lawsuit did not implicate attorney's First Amendment right to petition the government, and thus could not satisfy first prong of First Amendment retaliation claim;
- Preliminary development agreement did not confer a constitutionally protected property interest on developer; and
- There was a rational basis for city manager to recommend termination of preliminary development agreement, thus defeating developer's equal protection claim against manager under a class-of-one theory.

Actions of attorney, who later became member of limited liability company (LLC) developer, on behalf of a client in prior lawsuit in which city manager was called as a witness, did not implicate attorney's First Amendment right to petition the government, and thus could not serve as the required protected conduct to satisfy first prong of developer's First Amendment retaliation claim against city manager alleging manager retaliated against developer by terminating city's preliminary agreement to allocate development incentive funds to developer; attorney's actions on behalf of his client, who was not involved with developer or incentive fund agreement with city, only constituted client's exercise of his First Amendment petition rights, not an exercise of attorney's or developer's rights.

Preliminary development incentive agreement between city and developer, under which city was to provide $2.5 million to developer to finance redevelopment of dilapidated property, and city's resolution approving the agreement, did not confer a constitutionally protected property interest on developer, and thus city's termination of agreement did not deprive developer of its property in violation of Due Process Clause; under Illinois law, city's resolution approving the agreement only constituted an expression of city's opinion, resolution did not mandate a particular result based on stated criteria, agreement itself provided that developer acknowledged that city was not required to provide the incentive, and contract for building was conditioned on execution of final development agreement.

There was a rational basis for city manager to recommend termination of preliminary development incentive agreement with developer, under which city was to provide $2.5 million to developer to finance redevelopment of dilapidating property, thus defeating developer's equal protection claim against manager under a class-of-one theory premised on developer’s allegation that manager blocked the project out of animus for developer’s member embarrassing him in prior lawsuit; manager relied on developer’s own submissions about the corporate entity and its principals’ finances to conclude that project was not financially viable, which developer failed to refute, other concerns were raised at city council meeting, including developer’s failure to submit required development plans, and manager expressed concern about developer’s lack of experience in hotel development.