

Bond Case Briefs

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ZONING & PLANNING - DISTRICT OF COLUMBIA

Lumen Eight Media Group, LLC v. District of Columbia

District of Columbia Court of Appeals - August 11, 2022 - A.3d - 2022 WL 3270077

District of Columbia brought action seeking injunctive relief against sign company and building owners alleging that defendants violated regulations that purportedly required defendants to obtain permits before erecting signs on private property that were located under building overhangs.

The Superior Court granted District's motion for summary judgment. Defendants appealed.

The Court of Appeals held that:

- Defendants did not forfeit their right to rely on Sign Regulation Act;
- Sign Regulation Act provision pertaining to mayor's ability to issue and amend regulations applied to dispute;
- Sign Regulation Act provision pertaining to mayor's ability to issue and amend regulations applied to rulemaking; and
- Emergency rule promulgated by mayor, by which mayor amended regulations pertaining to sign permitting requirements, was invalid.

Sign company and business owners did not forfeit their right to rely on Sign Regulation Act provision pertaining to mayor's ability to issue and amend regulations pertaining to displaying signs on public and private property, even though Court of Appeals raised issue sua sponte and parties based their arguments in trial court on a different statute; Court invited, and received, supplemental briefs from parties so that it was not procedurally unfair, question was too important to overlook as determining which provision applied was antecedent to and ultimately dispositive of whether trial court's judgment was able to stand, and it would have thwarted intent of legislature to rely on statute that did not apply simply because parties failed to identify correct one.

Sign Regulation Act provision pertaining to mayor's ability to issue and amend regulations pertaining to displaying signs on public and private property, and not Construction Code provision pertaining to mayor's ability to issue and amend regulations pertaining to Code, applied to dispute on whether sign company and businesses were required by regulations to obtain permits before erecting signs on private property under building overhangs and whether mayor was able to amend such regulations by promulgating emergency rule, despite contention provision of Act did not apply to interior signs and was titled "Outdoor Signs"; language of Act indicated that it applied to private property within public view, and emergency rule at issue was designed to clarify that provision.

Sign Regulation Act provision pertaining to mayor's ability to issue and amend regulations pertaining to display on signs of public and private property, and not Construction Code provision pertaining to mayor's ability to issue and amend regulations pertaining to Construction Code, applied to rulemaking by which mayor allegedly amended regulations governing permitting requirements for signs by promulgating emergency rule, for purposes of dispute on whether sign company and businesses were required to obtain permits before erecting signs on private property under building overhangs; while scope of Code included placing and maintenance of interior signs,

Code provision pertaining to rule amendment said nothing specific about signs, and Act provision was enacted over 25 years after Code provision.

Emergency rule promulgated by mayor, by which mayor amended regulations pertaining to permitting requirements for display of signs on public and private property, did not receive the affirmative approval of the Council of the District of Columbia, and thus rule was invalid, for purposes of dispute on whether sign company and businesses were required to obtain permits before erecting signs on private property under building overhangs.