

TORT LIABILITY & GOVERNMENTAL IMMUNITY

Tort Liability & Governmental Immunity: Sovereign Immunity

Royal World Metropolitan, Inc. v. City of Miami Beach,
2003 WL 21658283 (Fla. 3d Dist. App. July 16, 2003)

The sovereign immunity provision contained within Florida's Harris Act cannot be construed to bar a private-property-rights claim against a municipality when the provision clearly contradicts the Act's legislative purpose and intent.

FACTS AND PROCEDURAL HISTORY

Royal World Metropolitan, Inc., sued the City of Miami Beach under Florida Statutes Section 70.001(1), otherwise known as the Bert J. Harris, Jr., Private Property Rights Protection Act (the Harris Act). The Harris Act provides relief to property owners when "laws, regulations and ordinances . . . may inordinately burden, restrict, or limit private property rights without amounting to a taking under the State [c]onstitution or the United States Constitution." Fla. Stat. § 70.001(1) (1999). Royal World claimed that the City's ordinances denied it of "all economically viable use of its property." *Royal World Metro., Inc.*, 2003 WL 21658283 at *1. The circuit court granted summary judgment in favor of the City based on its reading of Section 13 of the Harris Act, which provides that the Act "does not affect the sovereign immunity of government." Fla. Stat. § 70.001(13). However, the Third District Court of Appeal found that the circuit court erred in finding that Section 13 barred a cause of action against the municipality. Therefore, the appellate court reversed and remanded for further proceedings.

ANALYSIS

Courts should always construe and apply a statute to conform to the legislative intent, even when such construction will conflict with the statute's literal meaning. When two or more provisions within the same statute conflict, the last expression of legislative intent generally will prevail. However, as provided in *Sharer v.*

Hotel Corp. of America, 144 So. 2d 813 (Fla. 1962), an exception will be made when the latter provision contradicts the Legislature's clear policy and intent. In such case, the latter provision, "if operative at all," can be construed only in a manner consistent with the underlying policy. *Sharer*, 114 So. 2d at 816-817 (citing *Johnson v. State*, 27 So. 2d. 276, 282 (Fla. 1946) (emphasis added)).

The Harris Act's clearly defined purpose is to give rise to a "separate and distinct cause of action," whereby private-property owners can seek relief from the actions of governmental entities that "inordinately burden" the landowner's property rights, even when such actions do not rise to the level of a takings claim. Fla. Stat. § 70.001(1)-(2). Under the statute's definitions, municipalities are included as governmental entities. In the court's view, these provisions demonstrate a "clear legislative intent to waive sovereign immunity." *Royal World Metro., Inc.*, 2003 WL 21658283 at *2. Because Section 13 attempts to reassert the right of sovereign immunity, a literal reading of this provision directly contradicts the Harris Act's legislative purpose and intent. As the court noted, "it would be absurd to interpret Section 13 to undo everything the Act is designed to achieve." *Id.* Therefore, the court held that Section 13 could be construed to preserve the City's sovereign immunity rights in general, but could not bar a private-property-rights claim under the Harris Act as a matter of law.

SIGNIFICANCE

Statutory subsections asserting sovereign immunity will not bar citizen actions when they conflict with other subsections, and when the statute as a whole demonstrates a clear legislative intent to waive sovereign immunity. Although legislators may include such assertions within a particular statute, they will not be controlling for the purpose of statutory construction. Therefore, governmental entities that rely on, or attempt to hide behind, statutory provisions asserting sovereign immunity, risk having the provisions nullified or severely limited so that they provide no protection at all.

RESEARCH REFERENCES

- Eugene McQuillin, *The Law of Municipal Corporations* vol. 18, § 53.02.10 (3d rev. ed., West 2003).

- 48A Fla. Jur. 2d *Statutes* §§ 113, 184 (2000 & Supp. 2003).

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