

MUNICIPAL AUTHORITY

Municipal Authority: Annexation

Waite Development, Inc. v. City of Milton,
866 So. 2d 153 (Fla. 1st Dist. App. 2004)

An annexation petition and ordinance, taken together, constitute an express, written contract that bars a municipality from raising any defense of sovereign immunity against a breach of contract. The documents provide terms and conditions of the agreement between the two parties that include the petitioner's stated understanding regarding the municipality's duties.

FACTS AND PROCEDURAL HISTORY

Landowners petitioned the City of Milton to annex property adjoining the municipality. The petition stated the landowners' understanding that the City would provide water, sewer, and gas lines for the subdivision, which the landowners agreed to develop on the property. The City then passed an ordinance that referenced the petition and annexed the property. The property's development happened in two phases. When the first phase was completed, the City provided the water, sewer, and gas lines. Prior to the commencement of the second phase, the City passed another ordinance that prevented the City from providing such infrastructure for a private developer constructing a subdivision. The City informed the landowners that it would not provide the utilities for the second phase. The landowners sued for breach of contract, but the trial court dismissed the complaint on the grounds that, because there was no express written contract, the City was protected by sovereign immunity against the claim. The First District Court of Appeal disagreed with the trial court's order and remanded the case for further proceedings.

ANALYSIS

A state agency waives sovereign immunity only when there is an express written contract that so provides. *Pan-Am Tobacco Corp. v. Dept. of Corrections*, 471 So. 2d 4, 6 (Fla. 1984). Under basic contract law, an agreement is express if the parties reach it by words, oral or written. Similarly, "[s]everal writings may con-

stitute a valid and binding written contract when they evidence a complete meeting of the minds of the parties and an agreement upon the terms and conditions of the contract." *Waite*, 866 So. 2d at 155. Applying these principles to *Waite*, the First District Court disagreed with the trial court finding that there was no express written contract between the landowners and the City. The petition for voluntary annexation made by the landowners stated their understanding that the City would provide water, sewer, and gas lines for the subdivision. In response, the annexation ordinance passed by the City referenced the landowners' petition and annexed the property described therein. Thus, the documents could be construed together to provide the terms and conditions of an express written contract between the two parties. The existence of such an agreement barred the City's claim of sovereign immunity in defense to the landowners' action for breach of contract.

SIGNIFICANCE

This case firmly establishes the application of standard contract law principles to the annexation process. Thus, an annexation petition and ordinance can be construed together as a single written contract to provide the terms and conditions of such an agreement, and thwart a claim of sovereign immunity. These terms may include the petitioner's stated understanding about the municipality's duties.

RESEARCH REFERENCE

- 11 Fla. Jur. 2d *Contracts* § 98 (Westlaw database updated Feb. 2005).

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Municipal Authority: City Charters

Shulmister v. City of Pompano Beach,
886 So. 2d 434 (Fla. 4th Dist. App. 2004)

When two related, but conflicting, provisions in a municipal authority's charter exist, the court will harmonize the provisions

to avoid interpretations that render either of the provisions meaningless.

FACTS AND PROCEDURAL HISTORY

The City of Pompano Beach attempted to convey property designated as a "recreational facility" without holding a referendum. The City's charter allowed the City Commission to sell or dispose of property by adoption of a resolution, unless the property is designated as an "airport, park, golf course, or recreational facilit[y]." *Shulmister*, 886 So. 2d at 436. The City could convey such facilities only after approval by a majority of voters in a referendum. The charter also allowed the City to redesignate property by ordinance.

To avoid having to call the referendum to approve the conveyance of a parking lot near the Atlantic Ocean originally designated as a "recreational facility," the City redesignated the parking lot to a different classification and then conveyed the property to the Pompano Beach Community Redevelopment Agency without a referendum approving either transaction. Both transactions occurred at the same meeting.

A citizen, acting pro se, challenged the transfer, contending that the transfer without a referendum violated the charter. The trial court held that the City could transfer the property because the charter allowed the City to change the original designations of property by ordinance. Therefore, the City could change the designation of the property by ordinance and then convey the property by resolution. The Fourth District Court of Appeal affirmed the trial court and upheld the transactions.

ANALYSIS

To determine how the provisions of a city's charter should be given effect, the courts have set forth two related rules of construction. First, courts should avoid interpreting any statute in such a way as to render it meaningless. *Unruh v. State*, 669 So. 2d 242, 245 (Fla. 1996). Courts should also try to interpret statutes to harmonize conflicting but related provisions, so as to give effect to each. *Jones v. State*, 813 So. 2d 22, 25 (Fla. 2002).

The City's charter allowed the transfer of property by resolution unless the property was designated as a recreational facility. The charter required that the transfer of a recreational facility be

approved by referendum. The City could also change the property designation from a recreational facility to another designation by ordinance. Adopting the rules of construction, the court's determination gave effect to both provisions of the charter.

SIGNIFICANCE

These provisions granted the City two methods of disposing of property, both useful in different situations. Larger, more controversial transfers could be conveyed only after referendum approval, while smaller parcels could be disposed of by resolution, saving the City the time and money involved in an election.

As an aside, it is notable that the court did not discuss a standard for determining whether the City transferred the property in good faith. The only determination was whether the two provisions of the charter could co-exist.

RESEARCH REFERENCE

- Eugene McQuillin, *The Law of Municipal Corporations* vol. 10, §§ 28.43-28.44.15 (Thomas Evans & Judith O'Gallagher eds., 3d rev. ed., West 1999 & 2004 Supp.).

Jason C. Ester

Municipal Authority: Police Power Controls Ordinances & Regulations: Nuisance Abatement

Bal Harbour Village v. Welsh,
879 So. 2d 1265 (Fla. 3d Dist. App. 2004)

When a municipality enacts an ordinance to abate a nuisance, the municipality may use its police power to apply the ordinance retroactively. The fact that a property right is established before the enactment of the ordinance is not a defense to the enforcement of the ordinance against the property owner.

FACTS AND PROCEDURAL HISTORY

Bal Harbour Village, an incorporated municipality in Miami-Dade County, enacted an ordinance that limited the number of dogs kept on residential and commercial properties. The Village cited numerous reasons for enacting the ordinance, such as dog

bites, unleashed and roaming dogs, "excessive barking[,] and the failure of dog owners to clean up after their pets." *Bal Harbour Village*, 879 So. 2d at 1266. The ordinance permitted only two dogs or four puppies on each property in the Village.

William Welsh, a homeowner, owned four dogs at the time the Village enacted the ordinance. The Village subsequently cited Welsh for violating the ordinance on at least three occasions. When Welsh refused to comply with the ordinance and reduce the number of his dogs to two, the Village sought injunctive relief to force Welsh to comply and to pay fines and costs associated with his violations.

The trial court entered a temporary injunction against Welsh, which restricted Welsh's method of maintaining his dogs, but did not force Welsh to reduce the number of his dogs to two. Both parties filed cross-motions for summary judgment. The trial court found for Welsh and denied the Village's request for a permanent injunction. On appeal, the Third District Court of Appeal held that the Village could enforce the ordinance against Welsh even though Welsh owned more than two dogs before the Village enacted the ordinance. The appellate court reversed and remanded the case with instructions to enter a permanent injunction against Welsh.

ANALYSIS

Welsh first claimed that the Village could not enforce the ordinance against him because a section of the Village Code stated that it did not affect offenses that occurred before the Code's effective date. The Third District Court dismissed this argument because Welsh never raised it in the trial court, and thus waived it on appeal. However, the court explained that, even if Welsh was able to argue this on appeal, the argument would afford no relief. The court found that the applicable Code section applied only to property rights established before the adoption of the Code as a whole. Because the Code was adopted in 1947 and Welsh did not own dogs prior to 1947, the court reasoned that Welsh had no property rights to his dogs under that Code section.

Welsh next claimed that the Village could not constitutionally enforce the ordinance against residents who lawfully owned more than two dogs before the enactment of the ordinance. The court noted that Welsh did not contest the Village's police power to en-

act the ordinance nor did he allege that the Village was mistaken in finding that owning more than two dogs was detrimental to the public welfare. Rather, Welsh argued that, because the ordinance took away existing property rights, it was not merely a new procedural rule and thus could not be applied retroactively. The court agreed with Welsh that, generally speaking, laws that take away substantive rights should not be applied retroactively. This rule, however, is inapplicable when a government acts pursuant to its police power to abate a nuisance.

In finding for the Village, the court relied on the Florida Supreme Court's decision in *Knowles v. Central Allapattae Properties*, 198 So. 819, 823 (Fla. 1940), which held that the State's police power to protect the public's health, safety, and welfare is paramount and outweighs an individual's property rights. Because Welsh did not challenge the Village's authority to enact the ordinance or the Village's findings that owning more than two dogs is detrimental to the public welfare, the court did not address either issue. Instead, the court gave deference to the State's long-standing power to control animals, particularly dogs, through the police power, and held that the problems associated with multiple dog ownership and the Village's need to correct those problems permitted the Village to interfere with Welsh's property rights to his dogs.

SIGNIFICANCE

Bal Harbour Village addresses whether a citizen may successfully challenge a municipal ordinance enacted to abate a nuisance. The case clarifies that a citizen has the right to challenge the legislative findings that lead to the enactment of an ordinance and to challenge the municipality's police power to enact the ordinance. However, the State's police power to abate a nuisance will prevail over pre-existing property rights when the ordinance is reasonable and not arbitrary.

In addition, the case addresses the issue of whether an ordinance enacted to abate a nuisance can be applied retroactively. Unless the municipal code specifically contains language to the contrary, the State's interest in protecting the health, safety, and welfare of its people will prevail against the rights of property owners, even those established before the enactment of the ordinance.

RESEARCH REFERENCE

- 12A Fla. Jur. 2d *Counties* § 244 (1998).

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