

MUNICIPALITIES

Municipalities: Acting in Proprietary Capacity

DeFalco v. City of Hallandale Beach,
18 So. 3d 1126 (Fla. 4th Dist. App. 2009)

A municipality may act in its proprietary capacity when it owns a property that is the subject of a landlord-tenant dispute. When a municipality acts in its proprietary capacity, statutes apply to the municipality just as they would apply to private landowners.

FACTS AND PROCEDURAL HISTORY

In October 2007, appellants Joseph DeFalco and twenty-one other individuals (DeFalco) were tenants in Tower Mobile Home and R.V. Park (Park). The Park is located in the City of Hallandale Beach. The City of Hallandale Beach (City), appellee, is the owner of the Park.

On October 7, 2007, the City provided DeFalco with a “Notice of Termination of Tenancy Due to Change in Use of Land,” a document notifying appellants of the upcoming termination of their tenancy in the Park, effective October 13, 2008. The change in land use would no longer allow for mobile homes or other vehicle lot rentals. The City complied with Florida Statutes Section 723.061(1)(d) (2007) in serving the eviction notice. DeFalco sought declaratory and injunctive relief and asked the trial court to hold the eviction notices invalid because of the City’s failure to comply with Florida Statutes Section 723.083 (2007). According to Section 723.083, the City would have to conduct a study to ensure other suitable facilities existed for the mobile home tenants before serving the eviction notices. The City moved for summary judgment.

The trial court held in favor of the City, finding Section 723.083 did not apply to the City because the City was acting in its proprietary capacity when it served the notices. Additionally, the trial court found Section 723.061 and Section 723.083 facially constitutional.

DeFalco appealed, arguing the City should have complied with Section 723.083 and should have completed an alternative housing study before serving the eviction notices.

ANALYSIS

The Fourth District Court of Appeal ruled in favor of the City, finding Section 723.083 inapplicable to the City because it acted in its proprietary capacity as a landlord.

First, the court restated the provisions of Section 723.061 and Section 723.083. It emphasized that Section 723.061 specifies that Section 723.083 is inapplicable when a mobile-home park owner provides tenants with an eviction notice under Section 723.061. The court relied on *Gallo v. Celebration Pointe Townhomes, Inc.*, 972 So. 2d 992, 995 (Fla. 4th Dist. App. 2008), where the court found the requirements of the government under Section 723.083 and those of the park owners under Section 723.061 to be independent of each other. Applying the same reasoning, the court stated that “[t]he fact that the mobile home owner is a municipality does not change the application of the statutes.” *Defalco*, 18 So. 3d at 1128.

Second, the court pointed out that the action in question, the service of eviction notices, is not an official action. Official actions include a city’s passage of an ordinance. Service of a notice of eviction is not an official action when served by the park owner, regardless of whether the park owner is a municipality.

Finally, the court addressed DeFalco’s equal protection arguments. The City bought the Park property, and as such, acted in its proprietary capacity as the Park owner with regard to the statutes. The law treated DeFalco the same way as he would have been treated had the park been privately owned. Similarly, the City received the same treatment as any private park owner under the law. The court therefore found no violation of equal protection rights and held in favor of the City.

SIGNIFICANCE

DeFalco v. City of Hallandale Beach emphasizes that a municipality need only comply with statutes relevant to its actions based on the capacity in which the City acts. The fact that a mobile-home park owner is a municipality does not change the appli-

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cation of relevant statutes when evicting tenants of the mobile-home park.

RESEARCH REFERENCES

- 36 Fla. Jur. 2d *Mobile Homes and Recreational Vehicles* § 64 (2008).
- Jay M. Zitter, *Validity, Construction, and Application of Mobile Home Eviction Statutes*, 43 A.L.R.5th 705 (2009).

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