

Fort Lauderdale v. Hinton, No. 4D18-2089, 2019 WL 3310150 at *1 (Fla. 4th DCA July 24, 2019).

Fourth DCA Holds a Local Government Cannot Claim Sovereign Immunity in an Inverse Condemnation Claim Where Historic Contamination is at Issue

The Hintons claimed they were harmed by the actions taken by the City of Fort Lauderdale (“City”) in the 1950s. The City operated a municipal waste incinerator and a wastewater treatment plant on its Lincoln Park Complex that caused ash and other hazardous substances to disburse throughout the community where the Hintons lived. The City tested the land in 1997, which revealed the soil was contaminated, but it did not make attempts to clean the soil or notify the surrounding residents. Further, the City did not fence off the property until 2002, and the “no trespassing” signs the City posted did not warn of the possible contamination. The Hintons claimed the hazardous substances not only physically harmed them, but also prevented them from using their property and reduced its market value.

The Hintons brought a number of charges related to the City’s actions, which included a claim that the City’s discharge of contaminants onto the Hintons’ property constituted inverse condemnation.

On summary judgment, the City argued that the Hintons could not show that the City permanently and physically occupied their land in such a way that they could not use or enjoy it. The trial court was not persuaded by the City’s argument, and ruled against their motion for summary judgment. The City appealed the trial court’s decision prior to the judge issuing a final order. The City argued that unless the Hintons’ inverse condemnation claim was legally sufficient, they could not bring the claim against the City due to the doctrine of sovereign immunity. Citing to a dissent out of the First District Court of Appeals, the court held that the legal sufficiency of an inverse condemnation claim is not reviewable by a non-final appeal. The court reasoned that to hold otherwise would subvert a constitutionally protected right to that of the state-created sovereign immunity.