

Tropical Soup Corp. v. City of Key West, No. 4:20-cv-10132-KMM, 2021 WL 611351 (S.D. Fla. Feb. 9, 2021)

Southern District of Florida Holds City’s Withdrawal of Approved Lease With Property Owner Does Not Implicate a Property Interest if the Lease is Not Signed

In 2010, Tropical Soup Corporation (“Tropical Soup”) submitted a request for proposal (“RFP”) to the City of Key West (the “City”) to renovate and develop several pieces of property (collectively, the “Properties”) in the City. That year, the City accepted Tropical Soup’s RFP and was instructed to work with the County Manager on a lease agreement. For nine years, Tropical Soup and the City worked on a development plan that was a “complicated maze of regulations and litigation.” The City approved Tropical Soup’s lease in 2019, but then withdrew the approval later that year. In October 2020, the City Commission approved a resolution to cease all negotiations with Tropical Soup regarding the lease, and the City withdrew the 2010 RFP.

Tropical Soup brought suit against the City alleging, among other things, that the City deprived them of a property interest without due process of law. In response, the City moved to dismiss the lawsuit. The Southern District of Florida dismissed the suit, holding there was not a denial of due process because there was not a constitutionally protected liberty or property interest.

In doing so, the court explained that in order for a party to claim a due process violation, the party must allege that it was deprived of a constitutionally protected liberty or property interest, and that a property interest can be created by contract, statute, or the policies and practices of an institution. The court noted that the mere expectation of a contract does not rise to the level of a constitutionally protected property right.

The court held that Tropical Soup did not have a property interest because it only possessed an expectation to negotiate a contract with the City, rather than an enforceable contract. Although the City had initially approved the lease, it did not actually execute the lease by signing it. Additionally, while Tropical Soup had invested significant time and money into attempting to execute the lease, the attempt to do so did not amount to a property interest. Therefore, the court dismissed the suit.