

Second DCA Holds That Under Inverse Condemnation, No Compensation is Owed to a Grocery Store When the Store is Inextricably Intertwined With Drug Activity

Harbiya Abu-Khadier (“Landowner”) operates a grocery store in the City of Fort Myers (“City”). The grocery store was commonly “referred to as a drug haven full of loitering and open and notorious drug sales.” In response to the alleged drug activity, the City sent several notices to the store owner, held community meetings to discuss the alleged criminal activity, and eventually held a meeting with the City’s Nuisance Abatement Board (“NAB”). After hearing testimony from law enforcement officers and reviewing evidence confirming multiple drug transactions occurring both inside and immediately outside the grocery store, the NAB ordered a one-year closure of the grocery store.

The Landowner brought suit against the City, seeking damages for inverse condemnation due to the forced closure of the grocery store. On motion for summary judgment, the trial court ruled in favor of the City. The court reviewed the evidence presented, both at the NAB hearing and on summary judgment, and concluded that the “property was a well-known high risk area for illegal drug transactions for a number of years; that the City provided written notice of those activities to the Plaintiff; and that the Plaintiff failed to take reasonable actions to prevent the ongoing and pervasive drug activity.” The Landowner appealed the trial court’s ruling.

On appeal, the Second District Court of Appeal affirmed the lower court’s ruling. The appellate court noted that regulations “imposed for nuisance abatement must” be narrowly tailored to stop the illegal conduct in order to not infringe upon any lawful activities—unless the lawful and unlawful conduct are inextricably intertwined. If the lawful conduct and unlawful conduct are inextricably intertwined, the “nuisance exception” applies and the property owner will be unable to obtain compensation under an inverse condemnation claim. The court reasoned that because of ten warning letters sent by the City, the clear evidence of continuous drug activity both inside and outside the store, and the Landowner’s failure to attend the City’s meetings, the drug activity was too intertwined with the operation of the grocery store to allow the store to continue operating. Because the drug activity and the grocery store were inextricably intertwined, the court held that the Landowner was not able to receive compensation for the store’s temporary closure.