

City of W. Palm Beach, Inc. v. Haver, SC20-1284, 2021 WL 4467768 (Fla. Sept. 30, 2021), reh'g denied, SC20-1284, 2021 WL 5917916 (Fla. Dec. 15, 2021)

Florida Supreme Court Holds that Injunctive Relief is Not Available to Compel a City to Enforce a Zoning Ordinance

This case arose from a dispute over enforcement of a City zoning ordinance. Peter and Galina Haver (the “Havers”) were residents of a neighborhood located in the City of West Palm Beach (the “City”). The neighborhood was zoned single-family, low density residential. The Havers accused their neighbor of running a group home in violation of a City zoning ordinance. The Havers wrote multiple times to the City’s code compliance division to report the alleged violation. After the second communication, an officer visited the residence and did not report any evidence supporting the Havers’ allegations. The Havers filed a five-count lawsuit against the City. Two counts in the complaint sought injunctive relief requiring the City to investigate and, if necessary, take enforcement action against the neighbor’s alleged zoning violation. One count sought a declaratory judgment that the City violated its ordinance by refusing to take enforcement action against the neighbor. The trial court dismissed all the Havers’ claims against the City citing to the Third DCA’s decision in *Detournay v. City of Coral Gables*, 127 So. 3d 869 (Fla. 3d DCA 2013), which held that under the doctrine of separation of powers, a city’s discretion to file, prosecute, abate, settle, or voluntarily dismiss a building and zoning enforcement action is a purely executive function that cannot be supervised by the courts, absent the violation of a specific constitutional provision or law.

On appeal, the Fourth DCA affirmed the trial court’s dismissal of the Havers’ mandamus and certiorari claims, but reversed as to the claims for injunctive and declaratory relief. The Fourth DCA found that trial court was right to rely on *Detournay*, however the trial court failed to apply precedent from the Florida Supreme Court. According to the Fourth DCA, the Havers’ injunctive claims were permitted by the Florida Supreme Court’s decision in *Boucher v. Novotny*, 102 So. 2d 132 (Fla. 1958). The Florida Supreme Court granted the City’s petition for discretionary review.

The Florida Supreme Court clarified that its decision in *Boucher* evaluated whether a municipality had violated its own ordinance. Nowhere in *Boucher* did it say or imply that a third party’s violation of the ordinance, without more, would justify an injunction requiring the City to enforce the ordinance against the third party. The Court held that the Havers and the Fourth DCA misread *Boucher*. The Court’s decision in *Boucher*, at most, assumed the availability of injunctive relief against a City in some circumstances where the City violates its own zoning ordinance. In this case, the Havers alleged no such violation. The Florida Supreme Court remanded with instructions that the Havers’ claims the City for injunctive and declaratory relief be dismissed.