

Florida Second DCA Certifies Question to Florida Supreme Court on Whether 2021 Amendment to the Bert Harris Act Regarding Property Ownership Applies Retroactively

In 2010, Developer Dean Wish, LLC (“Dean Wish”) bought 55 parcels of mostly contiguous land in Lee County (the “County”) that was designated as “Coastal Rural” on the Future Land Use Map of the Lee County Comprehensive Plan. In 2015, Dean Wish submitted an application to the County seeking an administrative increase in the standard maximum density for the “Coastal Rural” lands and a permit for development at about one dwelling unit per 1.9 acres. Lee County responded that it was not authorized to approve the application. In 2016, Lee County set the density of “Coastal Rural” to one dwelling unit per 2.7 acres, and Dean Wish subsequently sued Lee County under the Bert J. Harris, Jr., Private Property Rights Protection Act (the “Act”). Several months later, Dean Wish was forced to sell the property at an auction, but the sales contract specified that Dean Wish retained all rights to monetary relief in the pending lawsuit. Lee County filed for summary judgment, arguing that the lawsuit could not be maintained because Dean Wish was no longer a property owner. The trial court agreed and granted summary judgment to the County.

The only issue discussed by the Second DCA was as follows: “[M]ay a [claimant] maintain an action under [the Act] where the [claimant] owned the property when it commenced the action but was forced to sell the property prior to trial while reserving the right to collect compensation?” The Second DCA first looked to the plain meaning of the statute, which defines “property owner” as “the person who holds legal title to the real property.” Noting that this definition in section 70.001(3)(f) of the Act is written in the present tense, the Second DCA held that Dean Wish is no longer a “property owner” entitled to relief under the Act.

The Second DCA further addressed the 2021 amendment to the Act. The amendment to subsection (2) of the Act added that “[a] property owner entitled to relief under this section retains such entitlement to pursue the claim if the property owner filed a claim under subsection (4) but subsequently relinquishes title to the subject real property before the claim reaches a final resolution.” The Second DCA held that this was not a clarification of existing law to be applied retroactively to Dean Wish, but rather a substantive amendment that creates new rights to be applied prospectively.

The Second DCA, recognizing that there could be a number of pending cases affected by its decision, certified the following question to the Florida Supreme Court: “Is the 2021 amendment to section 70.001(2) a clarification of existing law so that the plaintiff may maintain an action under the Bert Harris Act where the plaintiff owned the property when the plaintiff filed a claim under subsection (4) but was divested of ownership prior to trial?”