

**IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA**

PHILIP G. MAVON, JR.,

Plaintiff,

v.

CASE NO.: CACE-12-003298(03)

JUDGE: MILY RODRIGUEZ POWELL

**CITY OF FORT LAUDERDALE, a municipal
corporation of the State of Florida,**

Defendant.

ORDER ON CROSS-MOTIONS FOR SUMMARY JUDGMENT

THIS CAUSE came before the court on "Plaintiff, Philip G. Mavon, Jr.'s Motion for Summary Judgment," filed on December 7, 2012, and "Defendant's Response in Opposition to Plaintiff's Motion for Summary Judgment, and Defendant's Cross-Motion for Final Summary Judgment, Concise Statement of Undisputed Material Facts, and Incorporated Memorandum of Law," filed on February 4, 2013, pursuant to Fla. R. Civ. P. 1.510(b). A hearing on the motions was held on February 11, 2013, and this Court, after having considered the motions, arguments of counsel, the court file, applicable law, and being otherwise fully advised in the premises, finds that:

The function of a motion for summary judgment is to determine whether the parties have offered sufficient proof to support their claims and/or defenses. Bifulco v. State Farm Mut. Auto. Ins. Co., 693 So. 2d 707 (Fla. 4th DCA 1997). To obtain a final summary judgment, the moving party must conclusively demonstrate that no genuine issue of material fact exists, and that the moving party is entitled to judgment as a matter of law. Fla. R. Civ. P. 1.510(c); Holl v. Talcott, 191 So. 2d 40 (Fla. 1966). Both parties claim that there are no genuine issues of matter fact. Mavon claims that he is entitled to a judgment of equitable estoppel as a matter of law against the City for its refusal to grant a final inspection and approval of a boat basin built by Mavon pursuant to a permit issued by the City. In opposition, the City claims that equitable estoppel does not apply.

Mavon's property is in two sections; one is a single family residence and one a 25 x 25 foot section used to dock a boat. In 1969, when Mavon's father owned the property, he built a wooden dock on the smaller section, pursuant to a permit issued to him by the City. In 2010, Mavon applied for a permit from the City to remove the existing seawall, excavate and construct a boat basin on the property. Mavon's application was approved by the City and a permit was issued to him on August 3, 2010. Mavon's project to build a basin was also approved by Broward County and the Army Corps of Engineers.

Construction began on the boat basin and on September 3, 2010, Mavon received a letter from the City claiming that, "per City Code 47-19.3B, a boat slip may not be constructed unless a principal structure exists on the lot on which the boat slip is constructed..." Mavon immediately ceased construction; however, in order to prevent the "severely flooding of our already severely flooded street," Mayor Seiler lifted the hold on the construction project in order for Mavon to secure the seawall. In October, 2010, Mavon applied to the City's Marine Advisory Board for a waiver of the City's principal structure requirement and the board voted unanimously to recommend approval of the application.

A public hearing on the question of the waiver was scheduled for December 7, 2010, but was removed from the December 7th agenda and has not been reset. Mavon has made repeated requests to the City to make a final inspection and final approval of the boat basin, but the City has failed to do so. Mavon has incurred substantial costs and made substantial expenditures in excess of \$71,000.00, and has not enjoyed the use of the boat basin since its completion.

The City refuses to make the final inspection that Mavon seeks because it made a "mistake" in issuing the permit because there is no "principal structure" on the property and therefore, it is violation of § 47-19.3 of the City of Fort Lauderdale's Uniform Land Development Code, which provides, in pertinent part:

(c) No boat slips, docks, boat davits, hoists, and similar mooring structures not including mooring or dolphin piles or a seawall, may be constructed by any owner of any lot unless a principal building exists on such lot and such lot abuts a waterway. Mooring structures, not including

mooring or dolphin piles, shall not extend into the waterway more than twenty-five (25) percent of the width of the waterway or twenty-five (25) feet whichever is less as measured from the property line.

(d) Mooring or dolphin piles, shall not be permitted to extend more than thirty (30) percent of the width of the waterway, or twenty-five (25) feet beyond the property line, whichever is less.

- (e) The City Commission may waive the limitations of (c) and (d) under extraordinary circumstances, provided permits from all governmental agencies, as required, are obtained after approval of the City Commission, after a public hearing ..

ULDR Code § 47-19.3(emphasis added).

It is apparent that the principal building violation of § 47-19.3 could be waived by the City. Mavon has shown at least 13 examples where this section of the ULDR has been waived by the City to accommodate Fort Lauderdale residents.

Mavon asks this Court to apply the doctrine of equitable estoppel against the City. The doctrine of equitable estoppel may be invoked against a governmental entity just as if it were an individual. Castro v. Miami-Dade Cnty. Code Enforcement, 967 So 2d 230 (Fla. 3d DCA 2007). Equitable estoppel is appropriate where the plaintiff clearly and convincingly proves the following elements:

- (1) a property owner's good faith reliance
- (2) on some act or omission of the government and
- (3) a substantial change in position, or the incurring of excessive obligations and expenses, so that it would be highly inequitable and unjust to destroy the right the property owner has acquired.

City of Jacksonville v. Coffield, 18 So. 3d 589 (Fla. 1st DCA 2009).


The doctrine of equitable estoppel can only be invoked against a governmental entity under exceptional circumstances. Castro. The court in Castro found that it was grossly unfair to allow the county to enforce an ordinance against a homeowner when the violation was caused by an addition that was made to the home over 25 years prior and by the previous owner who had been issued a permit to construct the addition. Id. It is apparent, that like Castro, Mavon's circumstances are exceptional and that it would be grossly unfair to allow the very City that issued a permit to construct a dock on his property to prevent him from obtaining any benefit from it and applying estoppel will not

unduly harm the public interest. Associated Ins. Co., Inc. v. Dep't of Labor & Employment Sec., 923 So. 2d 1252 (Fla. 1st DCA 2006).

Accordingly, for the above-stated reasons and after due consideration, it is hereby:

ORDERED AND ADJUDGED that Mavon's motion for summary judgment is **GRANTED** and conversely, the City's motion for summary judgment is **DENIED**.

DONE AND ORDERED in Chambers, Fort Lauderdale, Florida, this 24th day of April, 2013.



MILY RODRIGUEZ POWELL
CIRCUIT COURT JUDGE

cc: James C. Brady, Esq., Attorney for Mavon, ARNSTEIN & LEHR LLP, 200 East Las Olas Blvd., Fort Lauderdale, FL 33301

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MILY RODRIGUEZ-POWELL

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