

Littoral Rights/Lakefront: Florida Appellate Court Addresses Damage Action for View Obstruction



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The District Court of Appeals of Florida (“Appellate Court”) addressed in an October 20th opinion a dispute between adjacent lakefront neighbors related to construction of a dock and walkway. See *HagertySmith, LLC v. Gerlander*, 2017 WL 4700002.

HagertySmith, LLC (“HS”) filed an action in the Circuit Court for Orange County, Florida against its former adjacent lakefront neighbors, Timothy Gerlander and Christine Gerlander (collectively “Gerlanders”) alleging damages as a result of their construction of a dock and walkway.

The construction of the dock and walkway allegedly obstructed HS’s view and enjoyment of the abutting lake.

The Gerlanders are stated to have built a dock and walkway that extended into Lake Tibet Butler in front of HS’s property.

HS subsequently sold the property. It asserted that the sale price was significantly reduced due to the constructed dock and walkway diminishing the fair market value of the property. HS sued for money damages for the difference between the sale price of the property and its fair market value without the obstructed view.

The lower court held that HS had no legally cognizable cause of action for damages in regards to its claims right to an unobstructed view of the lake.

The Appellate Court reversed and held that owners of real property abutting the lake have several common law littoral rights.

One of the rights is stated to be an unobstructed view of the lake.

The court cited to the record for the proposition that the Gerlanders dock and walkway encroached on that portion of the lake abutting HS’s property. The dock and walkway were deemed to be an encroachment upon HS’s littoral rights (i.e., landowner’s right to use the body of water bordering his or her property). As a result, the Appellate court reversed the lower court’s ruling that HS had no cognizable cause of action.

The Appellate Court did, however, determine that HS’s cause of action was insufficiently pled. It held that because HS may be able to plead a viable cause of action for private nuisance, it reversed the final summary judgment in favor of the Gerlanders with directions for the lower court to dismiss HS’s cause of action against the Gerlanders without prejudice and provide HS leave to amend its complaint.

[A copy of the opinion can be downloaded here.](#)