

*Hurchalla v. Lake Point Phase I, LLC, Nos. 4D18-1221 & 4D18-1632, 2019 WL 2518748
(Fla. 4th DCA June 19, 2019)*

**Fourth DCA Affirms a Former Martin County Commissioner’s Tortious Interference For
Fraudulently Misrepresenting a Development Project**

In *Hurchalla v. Lake Point Phase I, LLC*, the Fourth District Court of Appeal (“Fourth DCA”) found that a former Martin County Commissioner (“the Former Commissioner”) unlawfully interfered with development of a stormwater treatment facility (“the Project”) by acting with actual and express malice in sending emails with known misrepresentations to Martin County Commissioners. The Former Commissioner asserted the First Amendment privilege and her Florida common law privilege over the content of those emails—but both privileges were defeated by a showing of malice to delay or thwart the Project.

The Project involved a 2,266-acre tract of land (“the Property”) in Martin County that was to be developed into ranchettes. When the market declined in 2008, Lake Point, the contractor for the property owners, purchased the Property because of very economical limestone underneath it. Lake Point later entered into a public-private partnership with the South Florida Water Management District (“the District”) to construct a stormwater treatment facility because of the Property’s unique location between three different water basins. The District and Martin County also entered into an interlocal agreement in which Martin County acknowledged the numerous water-related benefits of the Project and agreed to not create any encumbrances on the Property.

The Former Commissioner did not express any concern until 2012, when she vocally expressed opposition to the Project. The Commissioner sent a series of emails discussing her disagreement with the Project to her friends on the Board of the Martin County Commission using private email accounts. The Former Commissioner’s emails encouraged the Commissioners to forward the emails to other Commissioners and Martin County staff. The emails prompted Martin County to significantly delay the Project. As a result, Lake Point sued the District, Martin County, and the Former Commissioner, individually. The claims against the District and Martin County later settled.

The lawsuit alleged that the Former Commissioner made a number of false and misleading statements to the Board of the Martin County Commission and the District targeting the Project. Specifically, the court found that the Former Commissioner knowingly lied in an email by stating there was no documentation on the treatment benefits of the Project, which was later exposed at trial when she admitted to reading a study regarding the treatment benefits prior to sending the email. On appeal, the Former Commissioner argued that she had a First Amendment privilege to petition her government and a Florida common law privilege to make statements to a governmental authority on issues of public concern. Both defenses failed after the court found that the Former Commissioner acted with actual and express malice by making known, fraudulent misrepresentations. The Fourth DCA upheld a jury verdict awarding \$4.4 million in damages because of the Former Commissioner’s tortious interference with the Project.