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EMINENT DOMAIN - FLORIDA

Florida Dept. of Transp. v. Mallards Cove, LLP

District Court of Appeal of Florida, Second District - March 6, 2015 - So.3d - 2015 WL 968710

Mallards Cove was a defendant in a 2007 quick-take eminent domain proceeding initiated by the Florida DOT to take a tract of land owned by Mallards Cove.

The circuit court entered an order of taking on August 15, 2007, pursuant to stipulation of the parties. The DOT was required to deposit a good faith estimate of value in the amount of \$2,004,320 into the registry of the court. The funds were deposited on August 30, 2007, and released to Mallards Cove, net of property taxes, on September 13, 2007.

While the funds were on deposit in the court registry, the Clerk elected to invest the funds. The Clerk earned investment interest on the deposit in the amount of \$4,396.49, and subsequently transferred ninety percent of that sum to the Department and retained ten percent, as provided by section 74.051(4).

In 2009, Mallards Cove sought a declaration that section 74.051(4) of the quick-take eminent domain statute is unconstitutional in that it directs clerks to pay ninety percent of interest earned on the quick-take deposit funds to the condemning authority and asserting a claim of inverse condemnation against the Clerk and the DOT, resulting from the disbursement of ninety percent of the accumulated interest to the DOT rather than to Mallards Cove.

The circuit court ruled that, as a matter of law, Mallards Cove owned the deposit funds from the moment the DOT deposited the funds into the registry. The circuit court further ruled that Mallards Cove owned the interest that was earned when the Clerk invested the deposit funds and that this investment interest "was property entitled to constitutional protection entirely separate and apart from the real property that was taken by the [DOT] in the underlying quick taking procedure." The circuit court extensively analyzed the requirements of class certification under Florida Rule of Civil Procedure 1.220 and ultimately granted class certification.

The District Court of Appeal reversed. As the condemnee in a quick-take proceeding, Mallards Cove was entitled to be paid full compensation for the real property taken by the DOT. No further taking occurred. Full compensation was determined pursuant to a stipulated final judgment from which no appeal was taken, and an interest award on the monies used to make Mallards Cove whole would be a "double dip." Mallards Cove had failed to establish that a justiciable case or controversy existed between it and the DOT or the Clerk.