

# **Bond Case Briefs**

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## **EMINENT DOMAIN - FLORIDA**

### **Florida Department of Agriculture and Consumer Services v. Dolliver**

**District Court of Appeal of Florida, Second District - November 13, 2019 - 283 So.3d 953 - 44 Fla. L. Weekly D2738**

Homeowners sought enforcement of judgments previously obtained against Department of Agriculture and Consumer Services for taking of their property and challenged constitutionality of statutes requiring legislature to appropriate funds before paying judgments.

Following an evidentiary hearing, the Circuit Court found statutes unconstitutional as applied and issued writ of mandamus directing Department to pay the judgments. Department appealed.

The District Court of Appeal held that:

- Department did not demonstrate inability to pay judgments so as to preclude issuance of writ of mandamus;
- Homeowners were not required to pursue a claim bill in the legislature in order to render their constitutional challenge ripe;
- Statutes, as applied, violated takings clauses of state and federal constitutions;
- Statutes, as applied, violated separation of powers and power of judiciary provisions of state constitution;
- Circuit court's issuance of writ of mandamus did not violate separation of powers; and
- Portions of circuit court's order regarding potential writ of execution against Department's property did not violate statute generally prohibiting execution against property of state or its agencies or Department's protection as a sovereign.

Department of Agriculture and Consumer Services did not demonstrate inability to pay judgments obtained by homeowners for taking of their property so as to preclude issuance of writ of mandamus directing it to pay judgments, despite argument that legislature had not appropriated funds for that purpose as required by statute, where Department made no efforts to pay or secure payment and failed to request an appropriation in order to make payment.

Homeowners who sought enforcement of judgments previously obtained against Department of Agriculture and Consumer Services for taking of their property and challenged constitutionality of statutes requiring legislature to appropriate funds before paying judgments were not required to pursue a claim bill in the legislature in order to render their constitutional challenge ripe, where nothing in the statutes referred to a claim bill, an appropriation had been made but had been vetoed by governor, and Department had not previously raised statutes as an impediment to paying other judgments.

Statutes requiring legislature to appropriate funds before state or any of its agencies could pay any judgments rendered against them, as applied to homeowners who sought enforcement of judgments obtained against Department of Agriculture and Consumer Services for taking of their property,

violated takings clauses of state and federal constitutions, where statutes, as applied, were not merely regulating payment but allowing department to completely avoid payment of required compensation.

Statutes requiring legislature to appropriate funds before state or any of its agencies could pay any judgments rendered against them, as applied to homeowners who sought enforcement of judgments obtained against Department of Agriculture and Consumer Services for taking of their property, violated separation of powers and power of judiciary provisions of state constitution, where statutes, as applied, thwarted payment of full compensation for takings, determined through court proceedings.

Circuit court's order and writ of mandamus requiring Department of Agriculture and Consumer Services to pay judgments previously obtained by homeowners for taking of their property did not violate separation of powers doctrine under state constitution, despite argument that it encroached on legislative prerogative to appropriate funds and Department's prerogative to control its own budget; judicial branch had authority to issue writ of mandamus compelling state agency to pay a valid judgment against it.

Portions of circuit court's order providing that, if Department of Agriculture and Consumer Services failed to comply with court's writ of mandamus requiring it to pay judgments previously obtained by homeowners for taking of their property, court would consider issuing writ of execution against Department's property, and allowing homeowners to conduct deposition in aid of execution and to submit a list of executable property to court did not violate Department's protection as a sovereign or statute generally prohibiting execution against property of state or its agencies; Department's interests yielded to homeowners' constitutional rights to be compensated for the governmental taking.