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**EMINENT DOMAIN - MASSACHUSETTS**

## Abuzahra v. City of Cambridge

**Supreme Judicial Court of Massachusetts - February 17, 2021 - 486 Mass. 818 - 162 N.E.3d 653**

After securing judgment in the Superior Court establishing his ownership over property at issue in action against the city, property owner filed motion to compel full tender of pro tanto payment with accrued interest.

The Superior Court Department issued interlocutory order denying the motion. Owner petitioned for interlocutory review. A single justice of the Appeals Court reversed the order. City appealed.

On transfer, the Supreme Judicial Court held that:

- As matter of first impression, "quick take" eminent domain statute permits property owners to both accept a pro tanto payment for a taking and simultaneously challenge the lawfulness of that taking, and
- City's appeal was not frivolous one as would warrant double costs as sanction.

"Quick take" eminent domain statute, which immediately transfers ownership of property from property owner to the taking authority independent of judicial processes, permits the property owner to both accept a pro tanto payment for a taking and simultaneously challenge the lawfulness of that taking.

City's appeal of determination by single justice of the Appeals Court, that "quick take" eminent domain statute allowed property owner to accept city's pro tanto offer for the taking of his property while simultaneously challenging that underlying taking was not frivolous, and thus property owner was not entitled to recover attorney fees and double costs as sanction, even though Supreme Judicial Court affirmed the single justice's order, since the case involved a novel question of law that the Court previously did not have occasion to address.

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