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EMINENT DOMAIN - FLORIDA

Orlando Bar Group, LLC v. DeSantis

District Court of Appeal of Florida, Fifth District - April 8, 2022 - So.3d - 2022 WL 1051484 - 47 Fla. L. Weekly D827

Restaurant group which operated several bars brought suit against the governor, in his official capacity, the Department of Business and Professional Regulations, and a county, alleging the temporary COVID-19 restrictions enacted by defendants amounted to inverse condemnation entitling the group to compensation.

The Circuit Court granted defendants' motion to dismiss with prejudice and without leave to amend. Restaurant group appealed.

The District Court of Appeal held that:

- *Penn Central* test applied to the determination of whether temporary COVID-19 restrictions on restaurant group's bars constituted a regulatory taking;
- Temporary COVID-19 restrictions did not amount to a categorical regulatory taking;
- Temporary COVID-19 restrictions did not amount to an as-applied regulatory taking; and
- Restaurant group failed to preserve for appeal issue of whether dismissal of its complaint with prejudice and without need to amend was improper.

Penn Central test applied to the determination of whether the temporary COVID-19 restrictions on restaurant group's bars, enacted by governor, Department of Business and Professional Regulations, and county, constituted a regulatory taking, in restaurant group's suit to recover damages for its alleged losses caused by the restrictions; the COVID-19 restrictions did not result in a physical appropriation and per se taking of restaurant group's property, but were merely regulations affecting restaurant group's use of their properties.

Temporary COVID-19 restrictions enacted by governor, Department of Business and Professional Regulations, and county, which prohibited restaurant group from selling alcohol completely for 17 days in its various bars, and incrementally removed these restrictions over the following six months, did not amount to a categorical regulatory taking; the COVID-19 restrictions did not result in a complete or permanent loss of restaurant group's ability to do business.

Under the *Penn Central* test, temporary COVID-19 restrictions enacted by governor, Department of Business and Professional Regulations, and county, which prohibited restaurant group from selling alcohol completely for 17 days in its various bars, and incrementally removed these restrictions over the following six months, did not amount to an as-applied regulatory taking; even though the COVID-19 restrictions economically impacted the restaurant group's various bars, the governor was empowered by the state's emergency powers statute to prohibit the sale of alcohol, and the COVID-19 restrictions were a valid use of the State's police power to protect the general welfare.

