

*McLendon v. Nikolits*, No. 4D15-4003 (4th DCA Jan. 25, 2017).

### **Agricultural Tax Classification Not Limited to Statutory List**

Recently our attorneys, Jacob T. Cremer and John N. Muratides were successful in helping a Palm Beach County family reverse a circuit court judgment denying the family's application for an agricultural tax classification.

The family owns a property in Palm Beach County that they use for raising birds to sell as pets. This practice of keeping and breeding birds is known as aviculture. For tax years 2006 through 2012, the family's property was granted an agricultural tax classification based on the land's uses for aviculture and cattle grazing. By having property classified as agricultural for property tax purposes, property owners receive certain *valorem* tax reductions and environmental exemptions.

In 2013, the county property appraiser denied an agricultural tax classification for the portion of the family's land devoted to aviculture. The appraiser claimed his office previously had mistakenly classified aviculture as an agricultural purpose for purposes of qualifying the property for an agricultural classification. The family challenged the appraiser's decision and the issue eventually was heard by a circuit court on appeal. The appraiser argued that the tax exemption was limited to those activities listed in the definition of "agricultural purposes" in section 193.461(5), Florida Statutes (2013). The appraiser argued that the Legislature included "poultry," and not "aviculture." The circuit court granted summary judgment in favor of the appraiser.

The family appealed the summary judgment to the Florida Fourth District Court of Appeal. The family argued that the list of agricultural activities in section 193.461(5), F.S. was not intended to be an exclusive list because of the phrase "includes, but is not limited to," preceding the list of activities. The appellate court held the phrase "includes, but is not limited to" is unambiguous and shows a clear legislative intent that the list is not exhaustive. Included in the list of agricultural purposes is land that is "used principally for the production of ... all forms of farm products as defined in s. 823.14(3) and farm production." The court held that the definition of "farm product" was purposefully broad ("any ... animal ... useful to humans and includes, but is not limited to, any product derived therefrom"). The court was satisfied by evidence presented that pet birds are useful to humans at minimum as entertainment and companions.

Therefore, the court concluded that the family's avicultural use was an agricultural purpose that qualified for the agricultural tax exemption.