IN THE SUPREME COURT OF FLORIDA

Case No.: SC16-1007
L.T. No.: 1D15-2916; 2011-CA-2367

CHRIS JONES, as Property Appraiser of
Escambia County, Florida, and
JANET HOLLEY, as Tax Collector of
Escambia County, Florida,

Petitioners,

v.

ISLAND RESORTS INVESTMENTS, INC.,

Respondent.

JURISDICTIONAL BRIEF OF PETITIONERS CHRIS JONES AND JANET HOLLEY

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STATEMENT OF THE CASE AND FACTS

Respondent ISLAND RESORTS INVESTMENTS, INC. ("Island Resorts") filed a Complaint against Petitioners CHRIS JONES, the Property Appraiser of Escambia County (the "Property Appraiser") and JANET HOLLEY, the Tax Collector of Escambia County ("Tax Collector") in 2011 and later years, alleging Island Resorts was not subject to local ad valorem tax on a 12-acre parcel of land that it leases for 99 years with an express option to renew for 99 more years. Escambia County has bare legal title to the parcel. The trial court entered summary judgment for the Property Appraiser, holding Island Resorts was equitable owner of the parcel. The First District reversed. *Island Resorts Investments, Inc. v. Jones, et al.,* Case No. 1D15-2916 (Fla. 1st DCA March 21, 2016).

In reversing and declaring the private developer of *Island Resorts* condominium units to be exempt from ad valorem tax, the First District directly contradicted two companion cases decided by a unanimous Supreme Court of Florida on March 20, 2014. Those cases confirmed that both land and real property improvements on Santa Rosa Island under similar leaseholds, including many non-perpetual leaseholds, were equitably owned by the leaseholders and fully subject to ad valorem taxes. *1108 Ariola, LLC v. Jones*, 139 So. 3d 857 (Fla. 2014) (addressing improvements on Escambia County half of Santa Rosa Island); *Accardo v. Brown*,

139 So. 3d 848 (Fla. 2014) (addressing land and improvements on Santa Rosa County half of Santa Rosa Island).

Despite the fact that this Court's twin rulings in *Accardo* and *Ariola* addressed many leases that were not perpetual, and expressly held in *Ariola* that perpetuity was not required to establish equitable ownership, the First District in the instant case ruled to the contrary, employing a legally unsupported and conflicting test requiring perpetual leaseholds in order to establish equitable ownership for ad valorem tax purposes. Island Resorts' lease, which is now at issue, is identical in pertinent part to one of the six representative leases ruled upon by this Court in *Accardo*. Specifically, a representative lease in *Accardo* was also for 99 years with an option to renew for 99 years. That representative lease in *Accardo* was not perpetual and it did not specify precise terms for renewal. Thus, the representative lease in *Accardo* was virtually the same as the lease in the instant case. Yet, the First District reached the opposite conclusion from *Accardo* and *Ariola*, holding the private developer, Island Resorts, was exempt, even though its lease calls for the construction and sale of private condominium units for private profit. The Property Appraiser moved for rehearing, certification and rehearing *en banc*. The First District denied those motions.

SUMMARY OF THE ARGUMENT

In March 2014, this Court laid all issues pertaining to the taxability of real property on Santa Rosa Island to rest. First, this Court unanimously held in *Ariola* that the plaintiffs on Pensacola Beach in Escambia County were the equitable owners of their improvements and condominium units. This Court answered a certified question in *Ariola,* holding perpetuity was NOT required in order to establish equitable ownership. On the same day, this Court unanimously held in *Accardo* that it was not just improvements, but also the underlying land, that made up the taxable assessment on Santa Rosa Island, even though some of the leases (including a representative lease just like Island Resorts' lease) were not perpetual.

The First District's decision expressly and directly conflicts with the companion cases of *Accardo* and *Ariola*. This Court acknowledged in *Accardo* that not all of the leases were perpetually renewable. *Accardo*, 139 So. 3d at 852 n.2. In fact, Island Resorts lease term is identical to one of the representative leases adjudicated in *Accardo*. Nevertheless, this Court held that all the leases in *Accardo* conferred equitable ownership. Given the twin rulings of this Court, it is completely contradictory for the First District to rule that perpetuity is required for land in Escambia County, but not in Santa Rosa County. In fact, the First District in *Ariola*, 71 So. 3d 892, 898 (Fla. 1st DCA 2011), held: "Escambia County leaseholders are

no different than the Santa Rosa County leaseholders in *Ward v. Brown* or *Accardo v. Brown*."

As a result of the First District's direct conflict with *Accardo*, however, the current status is that taxpayers' land on the eastern half of Santa Rosa Island (Santa Rosa County) is completely taxable, while the taxpayers' land under similar leases on the western half (Escambia County) is arguably exempt. This presents not only conflict in the case law, but a blatantly inequitable tax system. Thus, the First District's opinion also expressly affects two classes of constitutional officers – Property Appraisers and Tax Collectors. The First District's opinion sets a standard for equitable ownership, which is contrary to both this Court's opinions and Article VII, Section 6 of the Florida Constitution, which provides for equitable ownership for 98 year leases. These inconsistencies affect property appraisers throughout Florida, who must frequently address issues regarding the tax treatment of private users of governmental property.

Additionally, the First District's decision affects the class of tax collectors in ruling they have no standing to challenge unconstitutional tax exemptions. The opinion effectively blocked the parties from relying on a case from this Court, *Williams v. Jones,* 326 So. 2d 425 (Fla. 1975), which previously held it would be unconstitutional to exempt Santa Rosa Island leaseholders from ad valorem local government taxes. Moreover, because the Tax Collector does not grant or deny tax

exemptions, the statutes at issue do not prescribe any Tax Collector duties. Thus, the rule barring standing does not apply. Even if the rule applied, the First District refused to apply the longstanding "public funds" exception, which provides officials standing to challenge statutes impacting the receipt and disbursement of public funds. Case law describes this exception as one of paramount importance to ensure funds are collected and disbursed in accordance with the law. The First District erred in not allowing the Tax Collector standing to make such a challenge.

ARGUMENT

I. THE FIRST DISCTRICT'S DECISION EXPRESSLY AND DIRECTLY CONFLICTS WITH THE DECISION OF THIS COURT IN *Accardo v. Brown,* 139 So. 3d 848 (Fla. 2014).

In March 2014, this Court issued two unanimous opinions on the taxability of real property on Santa Rosa Island. In *1108 Ariola, LLC v. Jones,* 139 So. 3d 857 (Fla. 2014), this Court held the plaintiffs on Pensacola Beach in Escambia County were the equitable owners of their improvements and condominium units. In *Accardo v. Brown,* 139 So. 3d 848 (Fla. 2014), this Court held it was not just the improvements, but also the underlying land, which made up the taxable assessment on that portion of Santa Rosa Island in Santa Rosa County.

The Respondent, Island Resorts, holds its land under a 99-year lease with an option to renew for 99 more years. Island Resorts is developing the land to build condominium units to be sold for private profit. In *Accardo*, a representative lease

was also for a 99-year term with an option to renew for 99 more years. The representative lease in *Accardo* had provisions "common" to other leases in that case. Neither the Island Resorts lease nor this representative *Accardo* lease was perpetual. Nevertheless, this Court in *Accardo* held that this representative lease conferred equitable ownership, even though it was not perpetual.

In addition, *Ariola* held **perpetuity was NOT a requirement for equitable ownership:**

> Our holding in *Accardo* that the taxpayers in that case are equitable owners of both the improvements and the underlying land, turns on the fact that the leases are perpetually renewable. **In contrast, this case presents leaseholds that are not perpetually renewable.** We conclude, however, that **this distinction**—along with the absence of the right to obtain legal title for a nominal consideration—**is not sufficient** to remove the improvements on the properties at issue here from the scope of the equitable ownership doctrine.

Ariola, 139 So. 3d at 859 (emphasis added). The certified question in *Ariola* was whether perpetuity was a prerequisite to equitable ownership. This Court answered in the negative. In both *Accardo* and *Ariola,* this Court unanimously applied the equitable ownership doctrine to all leases in both cases, including the representative lease, which was not perpetual. In direct contradiction, the First District opinion held Island Resorts was not the equitable owner of its land.

The First District's opinion yields an untenable result with half of the island now subject to tax, while the other half is arguably exempt. This anomaly exists despite the absence of any material distinction between the leases in the two

counties. The First District in *Ariola* previously confirmed there were no material differences between the leases in each county. *Ariola*, 71 So. 3d at 898 ("Escambia County leaseholders are no different than the Santa Rosa County leaseholders in *Ward v. Brown* or *Accardo v. Brown*.") Yet, the panel in *Island Resorts* now disregards precedent, leaving residents of Santa Rosa Island with inconsistent and confounding results. This Court should exercise its jurisdiction to review this case.

II. THE FIRST DISTRICT'S DECISION EXPRESSLY AFFECTS A CLASS OF CONSTITUTIONAL OFFICERS.

A. Equitable Ownership Criteria

Petitioners are "county officers" pursuant to Article VIII, Section 1(d) of the Florida Constitution. Their duties include the equitable administration of the ad valorem tax system for local government and school districts in Florida. The First District's opinion creates inconsistent criteria for determining equitable ownership, thereby affecting all property appraisers and tax collectors in Florida. Thus, the opinion affects a class of constitutional officers, supporting jurisdiction. *Bystrom v. Whitman,* 488 So. 2d 520 (Fla. 1986) (case expressly affecting class of constitutional officers, based on discovery issue in valuation); *Florida State Bd. of Health v. Lewis,* 149 So. 2d 41, 43 (Fla. 1963) (jurisdiction to review decision affecting class of constitutional officers can be present even if only one such officer is involved in the litigation).

The First District opinion is inconsistent with both the recent decisions of this Court and the Florida Constitution. The opinion ignored Article VII, Section 6, of the Florida Constitution, which provides a definition of equitable ownership that includes any lease with an original term of 98 years or more. *Ward v. Brown*, 919 So. 2d 462, 464 (Fla. 1st DCA 2005) ("[T]he Florida Constitution expressly contemplates equitable ownership for leases with initial terms of 99 years by providing homestead exemptions for leaseholds in excess of 98 years.") This 98-year threshold applies to land and improvements. The First District opinion also erodes the precedents of *Ariola* and *Accardo*, which laid all issues pertaining to the taxability of real property on Santa Rosa Island to rest. Unfortunately, the First District's decision now resurrects these issues on the island and creates confusion for all Property Appraisers seeking to apply the doctrine of equitable ownership.

B. Tax Collector Standing

The First District's decision also adversely affects tax collectors by ruling they have no standing to challenge unconstitutional tax exemptions. In truth, this is not a standing issue, but an attempt to rely on a prior case of this Court which held it would be unconstitutional to grant Island Resorts the exemption it seeks. This Court held forty years ago that leaseholders on Santa Rosa Island have rights "tantamount to ownership," and were subject to local ad valorem taxes. *Williams,* 326 So. 2d at 436. *Williams* did not require perpetuity, noting each lease had a term of 99 years, except

one lease had an "initial term of only 25 years." *Williams,* 326 So. 2d at 428, n.1; *see also Archer v. Marshall*, 355 So. 2d 781 (Fla. 1978).

The First District ignored these authorities by erecting a standing hurdle that does not apply, because no law requires a litigant to prove standing in order to rely on settled law. The threshold argument in this case is that this Court had already ruled there is no "constitutional exemption" for Pensacola Beach leaseholders to enjoy intangibles tax treatment. *Williams*, 326 So. 2d at 432.

> To accept the [leaseholders] contention ... would not only result in such **leasehold interests being taxed on the reduced intangible personal property ad valorem rate** but would also **deprive the political subdivisions wherein the leaseholds are situated from raising revenues from such source in order to defray the costs of the services supplied to the users thereof, services which include, especially, the education of the children of such users.** The holder of a lease on Santa Rosa Island requires no less police protection or education of his or her neighbor in the county who occupies under a fee simple title.

Williams, 326 So. 2d at 431 (emphasis added). The leaseholders in *Williams* sought intangibles tax treatment, just as Island Resorts seeks. This Court rejected the argument, warning any attempt to carve these leaseholders out of the local tax base would be unconstitutional: "[T]he appellants [on Pensacola Beach] contend for a **constitutional exemption** from ad valorem real estate taxation **where <u>none exists</u> and**, **<u>if it did</u>**, **such an exemption would undoubtedly be discriminatory and violative of the equal protection provisions** of the Florida and United States Constitutions." *Id.* at 432 (emphasis added).

> If such a commercial establishment operated for profit on Panama City Beach, Miami Beach, Daytona Beach, or St. Petersburg Beach is not exempt from tax, then why should such an establishment operated for profit on Santa Rosa Island Beach be exempt? **No rational basis exists for such a distinction.**

Id. at 433 (emphasis added). It is **even less rational to treat taxpayers differently when they live on the same barrier island**, as the First District has done.

In any event, a public official is only barred from challenging statutes that prescribe their duties. The statute at issue defines a tax exemption. The Property Appraiser decides if an exemption should be granted. The Tax Collector has no such duty, so the bar on standing does not apply. Even if the general bar applied, however, tax collectors collect and disburse public funds, so they fall under the "public funds" exception to the standing rule. *Kaulakis v. Boyd,* 138 So. 2d 505 (Fla. 1962). "[T]he **necessity of protecting the public funds is of paramount importance**, and the rule denying to ministerial officers the right to question the validity of the Act must give way to a matter of more urgent and **vital public interest**." *Green v. City of Pensacola*, 108 So. 2d 897, 901 (Fla. 1st DCA 1959). The First District's opinion erodes that vital public interest.

CONCLUSION

Based on the foregoing, Petitioners respectfully urge this Court to exercise its discretionary jurisdiction to review this case.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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I hereby certify that this brief was prepared in Times New Roman 14-point font, in compliance with Rule 9.210(a)(2) of the Florida Rules of Appellate Procedure.

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