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IN THE SUPREME COURT OF FLORIDA

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

CHRIS JONES, as Property Appraiser for
Escambia County, Florida; JANET HOLLEY, as
Tax Collector for Escambia County, Florida,

Petitioners,

v.

ISLAND RESORTS INVESTMENTS, INC.,

Respondent.

RESPONDENT'S BRIEF ON JURISDICTION

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STATEMENT OF CASE AND FACTS

Petitioners' "Statement of Case and Facts" is filled with improper argument. And that argument is based on false statements and clearly erroneous readings of legal authorities. Thus, Respondent cannot adopt their Statement.

Petitioners falsely claim Accardo v. Brown, 139 So.3d 848 (Fla. 2014) and 1108 Ariola v. Jones, 139 So.3d 857 (Fla. 2014) hold that *all government land leases* on Santa Rosa Island convey fee simple title to land. [PJB: 1] Only Accardo addressed land leases, and its ruling was expressly limited to leases in perpetuity. In Ariola, it was conceded that the land was owned by the government.

Petitioners also erroneously claim that Accardo "ruled" on a lease that was "identical in pertinent part" to the Island Resort lease. [PJB: 2] The Master Lease in Island Resorts was a finite lease with no renewals. Accardo "turns on the fact the leases are perpetually renewable." Ariola at 859. Petitioners also claim that Island Resorts "exempts" the "western half" of Santa Rosa Island from taxation. There is no question that County-owned land is exempt. The issue in Island Resorts Investments, Inc. v. Jones, 189 So.3d 917 (Fla. 1st DCA 2016) was whether the taxpayer's property to be taxed was fee simple or leasehold interest. That issue has nothing to do with geography.

Petitioners also falsely claim that "perpetual leaseholds" were *required* by the First District in Island Resorts to establish equitable ownership. Island Resorts

analyzed the various methods in which an owner can convert what is a lease in form to a conveyance in substance, and found that none applied to the Island Resorts lease. Petitioners also argue that Island Resorts creates a "blatant inequity in the tax system." [PJB: 4] There is nothing inequitable about the legislature classifying leasehold interests as intangible personal property, as that classification is consistent with the common law. Also untrue is the claim that there is no "material difference" between a perpetual lease and a lease of finite duration. A perpetual lease equates to a conveyance of fee, and a leasehold interest is a lesser interest than fee simple title.

SUMMARY OF ARGUMENT

This Court found in Accardo that a "lease" in perpetuity is, in substance, a conveyance of fee, and the property interest created should be taxed as realty, not personalty.[1] Fla. Stats. §196.199(2)(b) applies only to leases and, hence, was not applicable to a conveyance of fee title. Island Resorts' lease was a finite lease with no renewals which qualified in every respect as a lease in form and substance. The First District simply applied well-settled law to the facts before it, as did this Court in Accardo in applying Fla. Stat. §196.199(2)(b). There is no conflict.

[1] Accardo 139 So.3d at 855 (leases for "ninety nine years, renewable forever" were perpetual leases in which the tenants were effectively the owners of the property" (citation omitted.))

As to Petitioner's argument that Island Resorts "affects" a class of constitutional officers, this Court has previously found that constitutional officers are not deemed "affected" for purposes of invoking the Court's jurisdiction simply because the lower court ruling modified, construed, or added to case law. Spradley v. State, 293 So. 2d 697, 701 (Fla. 1974). See, also, Miller v. Higgs, 468 So.2d 371 (Fla. 1st DCA 1985) review denied, 479 So.2d 117 (Fla. 1985). Petitioners cannot show that Island Resorts did anything other than construe and follow the existing law.

Petitioners make no jurisdictional showing either as to "conflict,"[2] or an "affect on constitutional officers," and the Petition should be DENIED.

ARGUMENT

I. THE FIRST DISTRICT'S DECISION DOES NOT CONFLICT WITH ACCARDO V. BROWN

This Court granted review in Accardo and Ariola to give much-needed clarity to trial courts. Petitioners attempt to muddle that clarity by pretending the

[2] Petitioners also argue that a reference in Ward v. Brown, 919 So.2d 462 (Fla. 1st DCA 2005) to homestead exemption, available for anyone who leases and resides in *improved property* for 98 years or more, converts all such leases into conveyances. Petitioners' argument ignored Fla. Stats. §196.041 which provides that this rule applies "for purposes of homestead exemptions…and no other purpose."

two cases collectively establish the same test for equitable ownership[3] of government-owned land and the improvements on that land.

Accardo and Ariola address separate and distinct issues governed by separate and distinct legal rationales and authority. The only issue in Ariola was ownership of tenant *improvements.* Tenant ownership of improvements is expressly contemplated by Fla. Stat. §196.199(2)(b). The test for making that determination is whether the useful life of the improvements is less than the duration of the lease. If it is, the improvements are tenant-owned.

By contrast, the useful life analysis is wholly inapplicable to land as land is deemed to last forever. With land, as explained in Accardo, the issue is whether the purported owner has surrendered forever, the all-important right of reverter; i.e., the right to come back in at the end of the lease and assume all rights temporarily leased to a tenant during the term of a lease.

This Court, a unanimous panel from the First District, Florida Jurisprudence, and the Florida Bar Journal, all recognize that Accardo turned on the perpetual nature of the leases addressed by that Court.[4] Petitioners argue it did not turn on perpetual leases because *one* of the 629 taxpayers in that action had a non-

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[3] Equitable ownership does nothing more than recognize substance over form.

[4] Accardo, 139 So.3d at 856; Ariola, 139 So.3d at 859; Island Resorts, 189 So.3d at 920; 51A Fla. Jur 2d Taxation §1204 (2015); *Owners for Tax Purposes Only: The Equitable Ownership Doctrine and Ad Valorem Taxation of Long-Term Leasehold Interests,* Steven M. Hogan, p. 42, THE FLORIDA BAR JOURNAL, March, 2015 Volume 89, No. 3

perpetual *sublease*. [PJB: 3] That argument is factually and legally without merit. It is wrong legally because no non-perpetual leases were considered by this Court because "no argument was made specific to those leases." Accardo, 139 So.3d 848 at n. 2. It is well recognized that arguments not raised are waived. Thus, Accardo "turns on *the fact* that *the leases are perpetually renewable*." Ariola, 139 So.3d at 859. (emphasis supplied).

Factually, it is undisputed that all subleases in Accardo flowed from *the same perpetually and automatically renewable Master Lease*. Accardo, 139 So.3d at 850. The relevant lease under Fla. Stat. §196.199(2) is the lease with the government owner, and the government owner in both Accardo and Island Resorts was Escambia County. The Master Lease in Island Resorts, unlike the one in Accardo, was for 99 years with no right to renew.[5] It was not perpetual.

The one connecting rationale between Ariola and Accardo is whether the landlord gets something of value back at the end of the lease. For improvements, the issue is "useful life," i.e., are the tenant improvements used up before the lease ends? As to land, the issue is whether the lease terminates at a definite point in time in which all rights revert back to the owner. The authorities relied upon by this Court in Accardo apply these principles. Application of this rationale supports the results in Accardo and Island Resorts. There is no conflict.

[5] Island Resorts, 189 So.3d at 919, 922.

The parties in Island Resorts agreed that the lease at issue was not perpetual[6], and the court found this lease to qualify in all respects as a lease in substance. The First District noted that, in addition to not being a lease in perpetuity, the Island Resorts' lease was not security for payment of the purchase price[7] or a lease with option to purchase for a nominal sum.[8] Being a lease, in form and substance, the Island Resorts lease created a *leasehold interest* as defined by Fla. Stats. §196.199(2)(b), and should have been taxed accordingly. These legally relevant factual differences reconcile the ruling in Island Resorts with Accardo.

II. ISLAND RESORTS DOES NOT AFFECT A CLASS OF CONSTITUTIONAL OFFICERS

A class of constitutional officers is not affected for purposes of invoking the Court's jurisdiction simply because the lower court ruling might "modify or construe or add" to the case law of this state. To vest this Court with certiorari jurisdiction, a decision must Directly and…Exclusively…affect a particular class of constitutional… officers" Spradley v. State, 293 So. 2d 697,701 (Fla. 1974). (See, also, Miller, 468 So.2d 371.)

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[6] Island Resorts, 189 So.3d at 918

[7] Island Resorts, 189 So.3d at 922. See, also, Accardo, supra, at pp. 853,854 (citing with approval: Hialeah, Inc. v. Dade County, 490 So.2d 998, 999-1000 (Fla. 3d DCA 1986) and First Union Bank of Florida v. Ford, 636 So.2d 523, 527 (Fla. 5th DCA 1993))

[8] Island Resorts, 189 So.3d 922. See, also, Accardo, supra, at pp.854,856 (citing with approval: Leon County Educational Facilities Auth., 698 So.2d 526 (Fla. 1997))

Island Resorts does not "directly" and "exclusively" affect only the tax collectors of this state. The argument that not allowing Petitioners standing to challenge the constitutionality of a statute "affects" them is a classic "bootstrap" argument. There is no jurisdiction under Article VIII, § 1(d).

No Conflict between Island Resorts and Williams v. Jones

Petitioner Tax Collector abandons her "standing" argument by conceding that "[i]n truth, *this is not a standing issue*, but an attempt (by her) to rely on a prior case of this Court which *held* it would be unconstitutional to grant Island Resorts the *exemption* it seeks." [PJB: 8-9] (emphasis supplied). The "prior case" referenced was Williams v. Jones, 326 So.2d 425, 432 (Fla. 1975).

Taxpayers in Williams, sought a judicial exemption from being taxed in the manner provided for by the taxing statutes. The exact opposite was true in the case at bar. Island Resorts sought *application* of the taxing statutes -- not a judicial exemption. Petitioners take the incredible position that Williams invalidated the taxing statute at issue, Fla. Stat. §196.199(2)(b), *five years before it came into existence* in 1980. [PJB: 4, 9] In Williams, this Court found "[t]he questions presented by the instant appeal essentially are: Does the Legislature have the power constitutionally to treat leasehold interests in public land such as are here involved as real property for ad valorem tax purposes and, secondly, has the

Legislature done so through the enactment of the statutory provision here under attack? We answer both propositions in the affirmative." Id. at 429.

This Court found that so long as a classification is applied "similarly to all under like conditions, it cannot be said to be "arbitrary, unreasonable or unjustly discriminatory." Id. The power to classify various property interests are within the "broad powers of classification by a state legislature for purposes of taxation." Id. at 432. The Legislature, in passing §196.199(2)(b) five years later, did nothing more than revert back to the common law rule recognizing a leasehold interest as intangible personal property,[9] and providing that it be taxed as such with certain exceptions, none of which were applicable in Island Resorts. The common thread in Island Resorts and Williams is that Legislative enactments are presumptively valid[10] absent a showing of non-uniform application, or being "arbitrary, unreasonable or unjustly discriminating." Id. at 430. The Island Resorts taxpayer did not seek an exemption from a legislative classification. The First District did

[9] A "chattel real" under common law, a species of personal versus real property. See, e.g., Williams, 326 So.2d at 433.

[10] State ex rel. Atl. Coast Line R. Co. v. State Bd. of Equalizers, 94 So. 681, 682 (Fla. 1922) ("every law found upon the statute books is presumptively constitutional until declared otherwise by the courts.")

nothing more than apply the classification as written, as did this Court in Williams.[11]

Ten years after Williams, the First District in Miller v. Higgs[12] noted that -- just as this Court in Williams found the Legislature had the power to depart from common law definitions in treating leasehold interests as realty -- it "also has the power to reclassify (consistent with the common law) some leasehold interests in public land as "intangible personal property" for tax purposes." Id. at 375. Any language in Williams that could be viewed as barring future legislatures from classifying leasehold interests in the manner they were classified under common law would be *dicta*. Id.

Rationales for legislative classifications are not limited to maximizing tax revenue, but can include "encouraging economic expansion, increasing potential for employment of its citizens, encouraging development of undeveloped land…" Miller at 377. Thus, a Legislative classification may be adopted to encourage leasing (a less advantageous method of obtaining possession) of government-owned land. Id.

[11] The rationale for classifying leasehold interests of government-owned land as intangible personal property is eloquently discussed in Miller v. Higgs, 468 So.2d 371, 377 (Fla. 1st DCA 1985).

[12] This Court in Capital City Country Club , Inc., v. Tucker, 613 So.2d 448 (Fla. 1993) disapproved Miller "to the extent it conflicts with this opinion." But there is no conflict regarding the constitutionality of §196.199(2)(b).

CONCLUSION

As this Court stated in The Florida Star v. B.J.F., 530 So.2d 286, 288-89 (Fla. 1988):

> While this court has subject-matter jurisdiction to hear any petition arising from an opinion that establishes a point of law, we have operated within the intent of the constitution's framers, as we perceive it, in refusing to exercise our discretion where the opinion below establishes no point of law contrary to a decision of this court or another district.

Island Resorts established no such contrary point of law.

This Court meticulously summarized the tests for equitable ownership of tenant improvements (i.e., useful life), and the underlying land (i.e., lease versus conveyance) in Ariola and Accardo, respectively. It relied on more than a century of cases from this State and others. Accardo, 139 So.3d at 850. The First District in Island Resorts applied the rationale outlined in Accardo. Thus, there is no conflict.

Island Resorts does not affect a class of constitutional officers, and no facts were presented to establish a "public funds" exception to a constitutional challenge. Petitioners admit their claim is actually based on a purported conflict between Williams and Island Resorts. There is no conflict.

Thus, no showing has made for this Court to take jurisdiction, and the Petition should be DENIED.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy hereof has been provided to the following on this 6th day of July, 2016, by E-mail transmission:

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CERTIFICATE OF COMPLIANCE

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.

/s/ Edward P. Fleming
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