

IN THE SUPREME COURT OF FLORIDA

BILL FURST, as Property Appraiser
of Sarasota County, Florida,

Petitioner,

v.

Case No.: SC19-701

Dist. Ct. Case No.: 2D17-3973

T/C Case No.: 2015 CA 006511 NC

SUSAN K, DEFRANCES,

Respondent.

_____/

Originating Court: Second District Court of Appeal

BRIEF OF PETITIONER ON JURISDICTION

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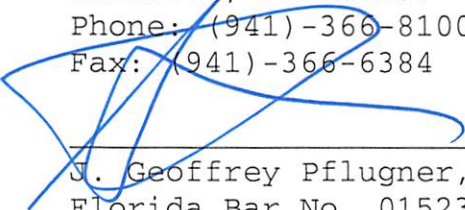

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STATEMENT OF THE CASE AND FACTS

Respondent, Susan K. DeFrances, ("DeFrances") holds a life estate in real property located in Sarasota County consisting of five lots combined in to one parcel for assessment purposes (the "Property"). The Property is improved with two homes on different lots within the parcel, one of which DeFrances rents to tenants. In 2013 the Property was assessed at a value of \$2,269,560.00.

Until 2013, the Property was assessed as a single tax parcel utilizing the "AssessPro" computer assisted mass appraisal ("CAMA") system. Effective 2014 the Property Appraiser converted their CAMA from "AssessPro" to "Custom CAMA." Under "AssessPro" the Property was inputted as a single parcel with five lots, such that the value of all five lots was attributed to the single parcel. During the conversion from "AssessPro" to "Custom CAMA" a clerical error occurred in that certain factors were not included in the value calculation, which resulted in the property being carried on the records as one lot with the assigned value of only one lot, rather than all five as had been historically assessed.

As a result the Property was assessed at \$302,400.00 for 2014, representing an erroneous reduction in value of \$1,967,160.00 compared to the prior year, resulting in a substantially smaller tax bill to DeFrances. When DeFrances received her 2014 tax bill, she promptly paid it. In 2015, the Property Appraiser discovered the clerical error,

corrected it, and adjusted the 2014 assessment to reflect the Property's correct just value.¹ The Property Appraiser then utilized the corrected assessment for the 2014 and 2015 tax year, issued a notice of proposed increase in assessed value to the Appellee and back assessed for the value of the Property that escaped taxation in 2014, Pursuant to Florida Statute Section 193.02, which allows back assessments on uncollected taxes for up to three prior years.

In response, DeFrances brought suit challenging the back assessment, amongst other counts not at issue in this appeal. The trial court entered summary judgment in the Property Appraiser's favor on all claims. DeFrances appealed only the back assessment for the 2014 tax year. In its opinion (the "Opinion") the Second District reversed, holding that Florida Statute Section 193.092, only allows Florida Property Appraisers to collect back taxes if a property or some specifically identified portion of it was "skipped"² **in its entirety** from the assessment. The Second District determined that the Property Appraiser's clerical error did not result in a specific portion of the Property escaping taxation, finding instead that the entire parcel was assessed, but only at a reduced value. The Second District therefore

¹In 2014 the Property's Assessed Value was actually \$2,473,518.00 and not \$302,400.00. This valuation was not challenged by DeFrances.

² The Second District utilized the term, noting "[h]ere, no portion of Ms. DeFrances's property was skipped."

determined Florida Statute Section 193.092 did not apply, and the Property Appraiser could not collect back taxes based on the proper value of the Property for 2014. The Second District's opinion contradicts Florida law addressing clerical or administrative errors, which can be retroactively corrected, compared to "errors of judgment" by a property appraiser, which cannot be retroactively corrected. The Second District ignored this distinction by finding that clerical or administrative errors (including those arising from the use of CAMA) cannot be retroactively corrected for purposes of collecting back taxes on the corrected value if there is any value applied at all to the subject property.

SUMMARY OF ARGUMENT

The Second District's holding has far reaching implications, as it applies to all Florida property appraisers and prevents back assessments of taxes resulting from clerical mistakes except under the unnecessarily limited circumstance when some part of the property is not taxed at all. Florida's system of ad valorem taxation provides for a uniform assessment as between property within each county and property in every other county or taxing district. The Florida Constitution establishes property appraisers as constitutional officers within their respective counties. These property appraisers comprise a "class" of constitutional officers in that a decision which affects one property appraiser can affect each property appraiser throughout the state.

This case addressees back assessments to collect unpaid taxes resulting from clerical errors made in the process of data entry into CAMA, not an error of judgment by the Property Appraiser. All sixty seven Florida Property Appraisers use CAMA to derive just, assessed and taxable values of all properties located in their jurisdictions. CAMA is a proprietary database application that aids in the appraisal process, incorporating statistical analysis to assist appraisers in establishing equitable values. Uniform and accurate property valuation of property requires correct, complete and current property characteristics. Data entry errors resulting from clerical mistakes can skew the assessments. The Opinion limits the property appraisers' ability to back assess a property to a specific type of clerical or ministerial error, to wit; where some physical, separately identifiable, portion of the property was entirely "skipped" in the assessment. Under the Opinion, all other errors are not correctable via back assessment. In this regard, the Opinion directly conflicts with the Florida Supreme Court and multiple decisions of district courts of appeal.

ARGUMENT FOR JURISDICTION

A. The Opinion Expressly and Materially Affects this State's Property Appraisers, a Class of Constitutional Officers

Florida's system of ad valorem taxation is designed to "provide for a uniform assessment as between property within each county and property in every other county or taxing district." § 195.0012, Fla. Stat.

(2018). The Florida Constitution, at Article VIII, Section 1 (d), establishes property appraisers as constitutional officers within their respective counties. Property appraisers comprise a class of constitutional officers and decisions which affect one property appraiser can, and usually do, affect each property appraiser throughout the state. *Fla. State Bd. of Health v. Lewis*, 149 So. 2d 41, 42-43 (Fla. 1963). Thus, discretionary review is authorized. See, e.g., *Bystrom v. Whitman*, 488 So. 2d 520 (Fla. 1986).

The Opinion eliminates the ability of the property appraisers to correct clerical or administrative errors in all circumstances which do not result in a portion of the property being completely "skipped". All sixty seven Florida Property Appraisers use CAMA. The Opinion prevents property appraisers from fully correcting computer or data entry errors. The only exception carved out by the Opinion is when an error results in a specifically identifiable portion of the a property being "skipped" in the assessment. No other mistake can be back assessed if any value was assigned to the portion of the property that was subject to the error, regardless of how much of the property's value escapes taxation.

Given the complexity of scenarios which arise surrounding property assessment for ad valorem taxation, it is critically important that property appraisers have uniform direction. With literally millions of properties being assessed statewide, property appraisers must have the ability to correct clerical errors, and then recover the back taxes for

up to three years, as authorized under Florida Statute Section 193.092. A single clerical or administrative error can, in a CAMA system, affect hundreds or even thousands of properties, none of which could be corrected pursuant to the Opinion. As this Court noted in *Smith v. Krosschell*, 937 So. 2d 658, 663 (Fla. 2006), the purpose of taxation is:

"That all taxpayers share in proportion to their assessments, the support of their government and the protection and services afforded to their property and to themselves, and that none bears an added or unfair burden by reason of other taxpayers not paying their just share." (Quoting *Korash v. Mills*, 263 So.2d 579, 582 (Fla. 1972)).

The Opinion undermines this basic purpose, causing some taxpayers to pay less than their proportional share, and everyone else to pay more.

B. The Opinion Expressly and Directly Conflicts with Decisions of the Florida Supreme Court and District Courts of Appeal

Florida courts have consistently upheld the property appraisers' obligation to correct clerical errors in assessments for the purpose of collecting back taxes. The Opinion directly conflicts with *Korash v. Mills*, 263 So. 2d 579, 581-82 (Fla. 1972), wherein this Court held:

[W]e have here an instance where the principal value of the property has indeed "escaped" taxation which is fairly within the contemplation of Fla.Stat. § 193.092, F.S.A. It would be an extremely inequitable and unjust result for a court of equity to grant to a knowing taxpayer an outright "windfall" of \$25,000 which was the additional tax he admittedly escaped for the year in question. Justice may be "blind" but it is not stupid. Impartial fairness and equality is what the blindfold represents. We cannot condone a taxpayer's blithely asserting refined definitions of single assessments and separate billings when he so clearly knew that there was no tax bill whatever for the improvement of a \$650,000 motel. The 1967 assessment and tax billed was precisely the same as

in 1966 when the land was bare. Any taxpayer would realize that he has "escaped" a new substantial tax on a new building which he knew would be forthcoming.

(Emphasis added).

The Second District avoids this holding by noting that *Korash* addressed an "entire improvement" being "skipped" when the property was assessed, and then claiming no identifiable part of the Property in the present case was entirely "skipped." Like the instant case, the property in *Korash* was assessed, but the assessment was erroneously low, and the court authorized a back assessment to recover the uncollected tax. Importantly, when discussing the meaning of when a property escapes taxation, the Court was clear that one is to look at the value of the property and the windfall of reduced taxes. The Opinion therefore directly conflicts with *Korash*.

Similarly, in *Robbins v. First Nat'l Bank*, 651 So. 2d 184, 184 (Fla. 3d DCA 1995), a property was assessed at \$775,000, but a key punch operator mistakenly entered \$265,000 as the value, and the tax was calculated and paid based on the erroneous value. No discernable portion of the subject property was skipped in any way and the only part of the subject property that escaped taxation was the value of the property itself. The Third District ruled that this type of error was correctable and subject to back assessment. The Opinion directly conflicts with this holding, as the Second District's basis for deciding the case was that the entire property was assessed and taxed (albeit

erroneously), and since the error only resulted in a lower value, it was not subject to back assessment. The errors corrected in *Robbins* would unquestionably be barred from back assessment under the Opinion. The Second District created a new distinction between properties that are erroneously under-assessed due to some physical portion being "skipped", versus properties that were under-assessed due to other types of clerical or administrative errors.

In *McNeil Barcelona Assocs., Ltd. v. Daniel*, 486 So. 2d 628, 629 (Fla. 2d DCA 1986), a property appraiser made an administrative error when finalizing an assessment for an apartment building by multiplying the square footage by four and a half instead of six. Again, the entire property was assessed, just at the wrong value. No specific portion of the property was skipped. The correct value was all that escaped taxation. The *Daniel* court upheld the increased taxes resulting from the correction. The Opinion is in direct conflict with this holding.³

In *Straughn v. Thompson*, 354 So. 2d 948, 949 (Fla. 1st DCA 1978), a property appraiser corrected a "computer error" in a tax bill which omitted a zero from the assessed value of the improvements on the property, resulting in a back assessment to recover the tax due on the increased value after the taxpayer had paid the erroneously reduced

³Based on the fact that the tax payer had paid the tax bill prior to receiving the challenged back assessment it is clear that this back assessment occurred after certification of the tax roll.

taxes. No specific portion of the property was skipped. The correct value was all that escaped taxation. The court ruled the back assessment was valid under *Korash v. Mills, supra*. The Opinion is in direct conflict with this holding.⁴

CONCLUSION

This Court should accept jurisdiction of this matter as the Opinion expressly and materially affects each and every property appraiser in the state of Florida, everyone one of which is a Constitutional Officer. In addition, the Opinion expressly and directly conflicts with the Florida Supreme Court and multiple decisions of the District Courts of Appeal.

⁴Based on the fact that the tax payer had paid the tax bill prior to receiving the challenged back assessment it is clear that this back assessment occurred after the certification of the tax roll.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was filed via the Florida Courts e-Filing Portal and delivered by e-service through to: Sherri L. Johnson, Esq., JOHNSON LEGAL OF FLORIDA, P.L., 2937 Bee Ridge Rd. Suite 1, Sarasota, FL 34239, sjohnsson@johnsonlegalfl.com, Attorneys for Plaintiff, and Robert P. Elson at robert.elson@myfloridalegal.com, lisa.ryder@myfloridalegal.com, jon.annette@myfloridalegal.com, Attorneys for LEON M. BIEGALSKI, and Bora S. Kayan, Esq., Assistant County Attorney, 1660 Ringling Boulevard, 2nd Floor, Sarasota, FL 34236, bkayan@scgov.net, Attorneys for Defendant Ford-Coates, on May 2nd, 2019.

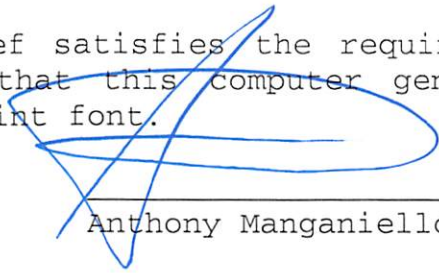
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CERTIFICATE OF COMPLIANCE

I certify that this Brief satisfies the requirements of Rules 9.100(1) and 9.210(a)(2) in that this computer generated brief is formatted in Courier New 12 point font.


Anthony Manganiello, Esquire