

IN THE SUPREME COURT OF THE STATE OF FLORIDA

BILL FURST, as Property Appraiser of Sarasota
County, Florida, et al.,

Petitioners,

v.

Case No. SC19-701

SUSAN K. DEFRANCES,

Respondent.

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RESPONDENT'S RESPONSE TO
PETITIONER'S MOTION FOR REHEARING

Respondent, Susan K. Defrances, responds to Petitioner Bill Furst's Motion for Rehearing as follows:

1. The Petitioner has sought a rehearing based primarily on his contention that the Court's Opinion misapprehended the interrelationship between section 193.092(1) and section 197.122, Florida Statutes. However, footnote 4 of the Opinion confirms that the Court correctly understood that, while section 197.122 authorizes the property appraisers to correct errors in their assessments, only section 193.092(1) provides authority for issuing a back assessment.

2. The Property Appraiser now appears to contend that section 197.122, Florida Statutes provides an independent basis for issuing a back assessment, as it allows for the correction of clerical errors "at any time." If interpreted in this way,

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section 197.122 would allow property appraisers to issue back assessments for mistakes they made many years ago, and it would render the back assessment statute, section 193.092(1), superfluous.

3. While section 197.122 does provide for property taxes to be a first lien on property, that lien is only created when the tax is properly assessed which, for back taxes, must be done in accordance with section 193.092(1).

4. Based on his new interpretation of section 197.122, the Property Appraiser contends that because Ms. DeFrances conceded that the error was a clerical error that could be corrected under section 197.122, the Property Appraiser's retroactive correction of the error resulted in a lien on her property. That is incorrect, as the lien would only arise once a tax had been assessed which, in this case, could only be done under section 193.092(1), if the property had escaped taxation.

5. The Property Appraiser also contends that the Court misapprehended the significance of Ms. DeFrances' concession that the error was a clerical error. However, the Court clearly acknowledged in its Opinion that, while it accepted the characterization of the Property Appraiser's errors as "clerical errors," that distinction is not relevant to the issue of whether a back assessment was authorized by section 193.092(1).

6. In short, the arguments raised by the Property Appraiser were considered by the Court in its Opinion, and it is clear from the Opinion that the Court correctly understood the distinction between section 197.122, which allows for the correction of clerical errors, and Section 193.092(1), which prescribes the limited circumstances in which back taxes may be assessed.

WHEREFORE, Respondent Susan K. DeFrances respectfully requests that the Court deny the Petitioner's Motion for Rehearing.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished electronically through the Florida Courts E-Filing Portal to J. Geoffrey Pflugner at jpflugner@icardmerrill.com and dmartin@icardmerrill.com, Jason A. Lessinger at jlessinger@icardmerrill.com, thashem@icardmerrill.com, and lkarpova@icardmerrill.com, and Anthony Manganiello at amanganiello@icardmerrill.com, thashem@icardmerrill.com, and lkarpova@icardmerrill.com, Robert P. Elson at robert.elson@myfloridalegal.com, jon.annette@myfloridalegal.com, and lisa.ryder@myfloridalegal.com, and Loren Levy at service.levylaw@comcast.net and geri.smith@comcast.net on this 4th day of October 2021.

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