IN THE DISTRICT COURT OF APPEAL, THE FIRST DISTRICT IN THE STATE OF FLORIDA

GULF COAST SOLAR CENTER I, LLC,
a Florida Limited Liability Company,

Appellant/Plaintiff

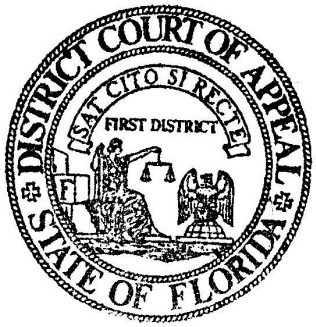
CASE NO. 1D20-1439
L.T No. 2019-CA-000473 F

vs.

MACK BUSBEE CFA, as the Okaloosa County Property Appraiser, State of Florida, BEN ANDERSON, as the Okaloosa County Tax Collector, and JIM ZINGALE, as the Executive Director of the Florida Department of Revenue,

Appellees/Defendants.

_____/



I CERTIFY THE ABOVE TO BE A TRUE COPY
KRISTINA SAMUELS, CLERK
FIRST DISTRICT COURT OF APPEAL
By: _____ Deputy Clerk

NOTICE TO INVOKE DISCRETIONARY JURISDICTION OF SUPREME COURT

NOTICE IS GIVEN that GULF COAST SOLAR CENTER I, LLC, Appellant/Plaintiff, invokes the discretionary jurisdiction of the supreme court to review the decision of this court rendered August 30, 2021. The decision expressly and directly conflicts with a decision of another district court of appeal or of the supreme court on the same question of law.

Respectfully submitted this 29th day of September 2021.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 29th day of September 2021 a true and correct copy of the foregoing was electronically filed through the Florida e-Filing Portal and a copy was furnished by email to all parties listed below.

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/s/ J. Riley Davis
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FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D20-1439

GULF COAST SOLAR CENTER I, LLC,

Appellant,

v.

MACK BUSBEE CFA, as the Okaloosa County Property Appraiser, State of Florida, BEN ANDERSON, as the Okaloosa County Tax Collector, and JIM ZINGALE, as the Executive Director of the Florida Department of Revenue,

Appellees.

On appeal from the Circuit Court for Okaloosa County.
John Jay Gontarek, Judge.

July 19, 2021

WINOKUR, J.

Gulf Coast Solar Center I, LLC, ("Gulf Coast") appeals an order granting final summary judgment in this case concerning ad valorem taxes in a federal enclave. The trial court ruled Gulf Coast's tangible personal property used in connection with a solar

energy generating facility located on a ground lease within the territorial confines of the Eglin Air Force Base was taxable. We agree and affirm.

In 1951, Florida ceded to the federal government exclusive jurisdiction over an area of land, which became Eglin Air Force Base. According to the Deed of Cession, the land was provided "for the purpose of erecting and maintaining thereon forts, magazines, arsenals, dockyards and other needful buildings or any of them as contemplated and provided in the Constitution of the United States." The Deed specifically addressed taxation and provided that the property was exempt from taxation under the laws of Florida while it continued to be "owned and occupied by the United States" for the purposes set forth in the Deed of Cession and "not otherwise." The Deed also provided cession was subject to the terms and effect of Florida Statutes.

In 2016, Gulf Coast subleased 240 acres of land on Eglin Air Force Base from Gulf Power Company, which had previously leased the land from the U.S. through the Secretary of the Air Force. After Gulf Coast's solar panels were constructed and operational, the Okaloosa County Property Appraiser ("Property Appraiser") issued a notice in 2018 assessing a tangible personal property tax (ad valorem tax) on the solar panel array. Gulf Coast then filed a complaint against the Property Appraiser, asserting that the solar energy generating facility was immune from ad valorem taxation because it was located within a federal enclave. After considering cross motions for summary judgment, the trial court ruled in the Property Appraiser's favor.

Gulf Coast argues simply that because the property is located on a federal enclave under the exclusive jurisdiction of the federal government the U.S. and Florida supreme courts have definitely held the property is exempt from taxation. *See Humble Pipe Line Co. v. Waggonner*, 376 U.S. 369 (1964); *Int'l Bus. Machs. Corp. v. Vaughn*, 98 So. 2d 747 (Fla. 1957). However, as the Property Appraiser correctly argues, the federal enclave doctrine is much more nuanced than Gulf Coast asserts.

First, because the property is on land leased pursuant to the Military Leasing Act, Congress consented to taxation. Under the

Military Leasing Act, the "interest of a lessee of property leased under this section may be taxed by state or local governments." 10 U.S.C. § 2667(f). Neither *Humble Pipe Line* nor *International Business Machines,* which Gulf Coast asserts definitely control the issue before this Court, involve the Military Leasing Act.

The Supreme Court in *Offutt Housing Co. v. Sarpy County, Neb.,* 351 U.S. 253, 259 (1956), held that the buildings, improvements, and appliances owned by the private lessees of property located within a federal enclave were subject to state taxation because Congress had indicated its consent for taxation of "the lessee's interest" under the Wherry Act and Military Leasing Act. 351 U.S. at 260. Although the federal government held paper title to the improvements under the lease, the full value of the building and improvements constituted the lessee's interest in the property subject to state taxation. *Id.* at 261–62. The state "may tax when the United States divests itself of proprietary interest over the area on which the tax is sought to be levied." *Id.* at 256 (citing *S. R. A., Inc. v. Minnesota*, 327 U.S. 558 (1946)).

The holding in *Offutt Housing* has been specifically applied to tangible personal property located on leased premises under the Military Leasing Act. *See Sec'y of Treasury of Puerto Rico v. Esso Standard Oil Co., (P. R.)*, 332 F.2d 624 (1st Cir. 1964). There, the property was owned exclusively by oil companies and used by them on the leased premises in their business of storing, distributing and selling gasoline and oil. *Id.* at 625. The court noted the Military Leasing Act's legislative history "indicates a concern about loss of revenue to the States and a desire to prevent unfairness toward competitors of the private interests that might otherwise escape taxation." *Id.* at 626 (quoting *Offutt Housing*, 351 U.S. at 260).

Additionally, even if Congress had not consented to taxation under the Military Leasing Act, the property would be subject to taxation pursuant to Florida law and the Deed of Cession. The Deed exempted the property from taxation so long as it was occupied by the United State for the purpose set forth in the Deed. Section 6.04, Florida Statutes, exempts property conveyed to the federal government for "needful" federal purposes while it continues to be "owned, held, used, and occupied by the United

States for the purposes" set forth in the statute "and not otherwise."

The Florida Supreme Court explained in *Bancroft Investment Corporation v. City of Jacksonville*, that under section 6.04 land is only exempt while used for governmental purposes. 27 So. 2d 162, 168–69 (Fla. 1946). There, the federal government sold the property to a private purchaser but retained legal title as security for payment under the contract to purchase. *Id.* at 163. The purchaser subsequently erected a five-story department store on the premises and City of Jacksonville levied ad valorem taxes on the property. *Id.* at 170. The supreme court held that the purchaser was the owner of the taxable interest in the property in question, that the United States had abandoned such use of the property as gave it exempt status under section 6.04, and that it was therefore amenable to taxation under the law of Florida. *Id.* at 171.

Similarly here, once leased for private enterprise the property is no longer exempt under the Deed of Cession and applicable Florida statutes. For this reason, Gulf Coast's reliance on *International Business Machines* is misplaced. The Florida Supreme Court held private property located on ceded land was not subject to state taxation. 98 So. 2d at 750. However, the property sought to be taxed was accounting machines owned by IBM and used exclusively by United States Air Force, located on ceded land still being used by the federal government for its intended purpose. *Id.* at 747–748. The court further noted that the United States had not consented to taxation like in *Offutt Housing*.

Accordingly, the order granting final summary judgment is affirmed.

AFFIRMED.

B.L. THOMAS and JAY, JJ., concur.

Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.

J. Riley Davis of Akerman, LLP, Tallahassee and George W. Powell, Jr. of Akerman, LLP, Naples, for Appellant.

Loren E. Levy of the Levy Law Firm, Tallahassee, for Appellee Mack Busbee CFA, Okaloosa County Property Appraiser.

DISTRICT COURT OF APPEAL, FIRST DISTRICT
2000 Drayton Drive
Tallahassee, Florida 32399-0950
Telephone No. (850)488-6151

August 30, 2021

CASE NO.: **1D20-1439**
L.T. No.: 2019-CA-000473 F

Gulf Coast Solar Center I, LLC	v.	Mack Busbee CFA, as the Okaloosa County Property Appraiser, State of Florida, Ben Anderson, as the Okaloosa County Tax Collector, and Jim Zingale, as the Executive Director etc.
Appellant / Petitioner(s),		Appellee / Respondent(s)

BY ORDER OF THE COURT:

Appellant's motion docketed August 03, 2021, for rehearing and rehearing en banc is denied.

I HEREBY CERTIFY that the foregoing is (a true copy of) the original court order.

Served:

George W. Powell Jr.
Loren E. Levy
Stuart W. Smith
J. Riley Davis
Robert P. Elson, AAG
Timothy R. Qualls

th

KRISTINA SAMUELS, CLERK

DISTRICT COURT OF APPEAL
SAT CITO SI RECTE
FIRST DISTRICT
STATE OF FLORIDA

DISTRICT COURT OF APPEAL
FIRST DISTRICT
STATE OF FLORIDA
2000 DRAYTON DRIVE
TALLAHASSEE, FLORIDA 32399-0950
(850) 488-6151

KRISTINA SAMUELS
CLERK OF THE COURT

DANA SHARMAN
CHIEF DEPUTY CLERK

September 29, 2021

Re: Gulf Coast Solar Center I, LLC vs Mack Busbee CFA, as the Okaloosa County Property Appraiser, State of Florida, Ben Anderson, as the Okaloosa County Tax Collector, and Jim Zingale, as the Executive Director etc.
Appeal No: 1D20-1439
Trial Court No.: 2019-CA-000473 F
Trial Court Judge: Hon. John Jay Gontarek
If Crim, LT NOA date: 05/06/2020

Dear Mr. Tomasino:

Attached is a certified copy of the Notice Invoking the Discretionary Jurisdiction of the Supreme Court, pursuant to Rule 9.120, Florida Rules of Appellate Procedure. Attached also is this Court's opinion or decision relevant to this case.

___ The filing fee prescribed by Section 25.241(2), Florida Statutes, was received by this court.

___ The filing fee prescribed by Section 25.241(2), Florida Statutes, was not received by this court.

_✓_ Petitioner/Appellant has previously been determined insolvent by the circuit court or our court in the underlying case.

___ Petitioner/Appellant has already filed, and this court has granted, petitioner/appellant's motion to proceed without payment of costs in this case.

No filing fee was required in the underlying case in this court because it was:

___ A summary Appeal, pursuant to Rule 9.141
___ From the Unemployment Appeals Commission
___ A Habeas Corpus proceeding
___ A Juvenile case
___ Other _____

If there are any questions regarding this matter, please do not hesitate to contact this Office.
A motion postponing rendition pursuant to Florida Rule of Appellate Procedure 9.020(i) ____ is or _✓_ is NOT pending in the lower tribunal at the time of filing this notice.

Sincerely yours,

Kristina Samuels
Clerk of the Court
By:_____
Deputy Clerk