

505 So.2d 690, 12 Fla. L. Weekly 1078

District Court of Appeal of Florida,  
First District.

Matt Langley BELL, III, Tax Collector for Escambia County, Florida, Escambia County, Florida, a political subdivision of the State of Florida, R.J. Hooten, and Santa Rosa Island Authority, Appellants,

v.

R.D. BRYAN, a/k/a Ruerpert D. Bryan, and Nellie B. Bryan, Husband and Wife, Don Bryan, Merrell Fairchild, William O. Wedel, a/k/a W.O. Wedel and Dorothy Thayer, Appellees.

No. BL-45.

April 21, 1987.

In dispute regarding county tax assessment on leased property owned by county, the Circuit Court, Escambia County, John T. Parnham, J., granted summary judgment in favor of taxpayers, and county appealed. The District Court of Appeal, Nimmons, J., held that: (1) it was improper for tax collector to issue tax certificates on improvement on property owned by county but leased by improver to enforce tax assessments, and (2) tax assessments erroneously taxed improvements at real property rate instead of at applicable intangible personal property rate.

Affirmed.

West Headnotes



[\[1\] KeyCite Notes](#)

[371](#) Taxation

[371III](#) Property Taxes

[371III\(L\)](#) Sale of Land for Nonpayment of Tax

[371k2986](#) k. Certificate of Sale. [Most Cited Cases](#)

(Formerly 371k686)

County tax assessor improperly issued tax certificates on improvements on property owned by county, but leased to improvers, to enforce tax assessments. [F.S.1983, § 197.116\(8\)](#).



[\[2\] KeyCite Notes](#)

[371](#) Taxation

[371III](#) Property Taxes

[371III\(H\)](#) Levy and Assessment

[371III\(H\)5](#) Valuation of Property

[371k2510](#) k. In General. [Most Cited Cases](#)

(Formerly 371k347)

Improvements to leased property owned by county were improperly taxed at real property rate instead of at applicable intangible personal property rate pursuant to exemption under taxation statute, as improvements were part of leasehold. [West's F.S.A. §§ 193.011](#) et seq., [196.001](#) et seq., [196.199\(2\)\(b\)](#), [200.001](#) et seq.

\*690 Thomas F. Condon of Mitchell & Condon, Pensacola, for appellant Bell, Tax Collector.

J.B. Hopkins, Pensacola, and Larry E. Levy of McFarlane, Ferguson, Allison & Kelly, Tallahassee, for appellant Escambia County.  
Spencer Mitchem of Beggs & Lane, Pensacola, for appellant Santa Rosa Island Authority.  
M.J. Menge, of Shell, Fleming, Davis & Menge, Pensacola, for appellees.

#### ON REHEARING

NIMMONS, Judge.

We substitute the following for the opinion of January 23, 1987, filed in this case. Except for the modification exemplified by the amended opinion, rehearing is denied.

Appellants challenge a summary judgment entered in favor of appellees, taxpayers on Santa Rosa Island. We affirm.

Appellant, Escambia County, owns property on Santa Rosa Island which it leases to appellees through its agents, the Santa Rosa Island Authority. Each lease states in part:

(3) The above described property is leased to lessee as residential property for the purpose of constructing and maintaining a beach home or seasonal or permanent residence thereon. Lessee covenants and agrees at his own cost and expense to erect and complete a dwelling house on said property....

(4) Title to any building or other improvements of a permanent character that shall be erected or placed upon the demised premises by the lessee shall forthwith vest in said Escambia County, subject, however, to the term of years and option to renew granted to lessee under terms of this lease.

Appellees are leaseholders who improved their lots for residential purposes.

With regard to the taxes to be paid by appellees in 1982 and 1983, the County assessed no tax on the value of the leasehold \*691 without improvements. This was apparently taxed by the state as intangible personal property pursuant to [Section 196.199\(2\)\(b\), Florida Statutes \(1981\)](#). However, taxes on the improvements made by the lessees/appellees were assessed at the full real property rate. Appellant/Tax Collector issued tax certificates on the property to enforce the assessments. Appellees filed a complaint requesting declaratory and injunctive relief. The trial court granted summary judgment in favor of appellees finding that the real property belonged to the County, thus making tax certificates an improper method of enforcing an assessment, and finding that the assessments should have been at the intangible property rate instead of the real property rate. We affirm on both grounds.



[1] The first issue raised by appellants is that it was not improper for the tax collector to issue tax certificates on the improvements on the property owned by Escambia County.<sup>FN1</sup> As the trial court found under the above quoted terms of the lease, the improvements on the Santa Rosa properties belong to Escambia County. That being the case, it is inappropriate to enforce tax assessments via sale of tax certificates. [Section 197.116\(8\), Florida Statutes \(1983\)](#). The trial court was correct in granting summary judgment on this ground.

[FN1](#). Appellant/Tax Collector concedes the correctness of the trial court's findings on this point. However, the other appellants do not.



[2] The alternative ground suggested by appellees for granting summary judgment was that the assessments were erroneous in that they taxed the improvements at a real property rate instead of at an intangible personal property rate. The trial court agreed with this interpretation of existing law. So do we.<sup>FN2</sup>

<sup>FN2</sup>. No constitutional challenge to this statutory taxation scheme is raised on appeal and therefore, of course, no constitutional issues are determined.

[Section 196.001, Florida Statutes](#), which has remained unchanged since 1971, provides:

Unless expressly exempted from taxation, the following property shall be subject to taxation in the manner provided by law:

- (1) All real and personal property in this state and all personal property belonging to persons residing in this state; and
- (2) All leasehold interests in property of the United States, of the State, or any political subdivision, municipality, agency, authority, or other public body corporate of the state.

The general method of taxation is prescribed in other parts of Florida Statutes, e.g. Chapters 193 and 200. However, within Chapter 196, entitled "Exemptions," appears [Section 196.199\(2\)\(b\), Florida Statutes \(1981\)](#)<sup>FN3</sup>:

<sup>FN3</sup>. The statute was slightly changed in 1985. Chapter 85-342, Laws of Florida.

(2) Property owned by the following governmental units, but used by nongovernmental lessees, shall only be exempt from taxation under the following conditions:

\* \* \*

(b) ... Such leasehold estate shall be taxed only as intangible personal property pursuant to Chapter 199 if rental payments are due in consideration of such leasehold estate. If no rental payments are due pursuant to an agreement creating such leasehold estate, the leasehold shall be taxed as real property. Nothing in this section shall be deemed to exempt personal property, buildings, or other real property improvements owned by the lessee from ad valorem taxation.

The exemption contained in this section is applicable to the instant leaseholds. All parties concede that the exemption applies to the real property on which the improvements were built. However, appellants argue the novel proposition that the improvements, which are property of Escambia County, and the development of which is the express purpose of the creation of the leasehold, are not part of that leasehold. We can find no basis in law or reason for determining that the improvements on the \*692 real property are not as much a part of the leasehold as the real property itself.

The trial court correctly determined that the assessments placed on the improvements to the subject property were erroneous and should have been determined at the intangible personal property rate pursuant to the above quoted section.

Accordingly, the summary judgment in favor of appellees is AFFIRMED.

519 So.2d 1024, 13 Fla. L. Weekly 131

District Court of Appeal of Florida,  
First District.

Matt Langley BELL, III, as Tax Collector of Escambia County, Florida and John R. Jones,  
as Property Appraiser of Escambia County, Florida, Appellants,

v.

Don BRYAN, Ruepert D. Bryan, and Nellie B. Bryan, W.O. Wedel, Dorothy H. Thayer and  
Merrell Fairchild, Appellees.

No. BR-449.

Jan. 5, 1988.

Rehearing Denied March 4, 1988.

Tax collector appealed from final judgment of the Circuit Court, Escambia County, M.C. Blanchard, J., granting motion to dismiss filed by taxpayers. The District Court of Appeal, Shivers, J., held that property appraiser had no authority to assess taxpayers' interests in their leasehold improvements.

Affirmed.

West Headnotes



[1] [KeyCite Notes](#)

🔑 [371](#) Taxation

🔑 [371III](#) Property Taxes

🔑 [371III\(K\)](#) Collection and Enforcement Against Persons or Personal Property

🔑 [371III\(K\)2](#) Summary Remedies and Actions

🔑 [371k2848](#) Actions for Unpaid Taxes

🔑 [371k2853](#) k. Defenses. [Most Cited Cases](#)

(Formerly 371k587)

Statute precluding action contesting tax assessment after 60 days from date of assessment applies on its face to instances where taxpayer is in posture of plaintiff bringing action contesting tax assessment, not to action in which taxpayers, as defendants, challenge appraiser's authority. [West's F.S.A. § 194.171\(2\)](#).



[2] [KeyCite Notes](#)

🔑 [371](#) Taxation

🔑 [371III](#) Property Taxes

🔑 [371III\(C\)](#) Liability of Private Persons and Property in General

🔑 [371k2186](#) Ownership or Possession of Property, and Persons to Whom Taxable

🔑 [371k2188](#) k. Particular Estates or Interests in Property. [Most Cited Cases](#)



(Formerly 371k80)

Property appraiser had no authority to assess taxpayers' interests in their leasehold improvements.

\***1024** Thomas F. Condon and J.B. Hopkins, Pensacola, and Larry E. Levy, of MacFarlane, Ferguson, Allison & Kelly, Tallahassee, for appellants.  
M.J. Menge, of Shell, Fleming, Davis & Menge, Pensacola, for appellees.

SHIVERS, Judge.

Appellant, Matt Langley Bell, III, appeals from the trial court's final judgment of dismissal granting a motion to dismiss filed by the appellees/taxpayers. Bell raises the following issues in this appeal: (1) whether the trial court erred in concluding that the assessments made against the appellees were against their leasehold interests, which by Florida law are defined as intangibles, and (2) whether the trial court erred in granting appellees' motion to dismiss in view of Bell's allegations that the statute of limitations barred such a challenge. We affirm.

[1]  [2]  We affirm as to Issue I based on our holding in [Bell v. Bryan, 505 So.2d 690 \(Fla. 1st DCA\)](#), review denied, [513 So.2d 1060 \(Fla.1987\)](#). As to Issue II, we note that [section 194.171\(2\), Florida Statutes \(1983\)](#), <sup>FN1</sup> applies on its face to instances **\*1025** where the taxpayer is in the posture of a plaintiff bringing an action contesting a tax assessment, and that in the instant case, the taxpayers are the defendants. Moreover, the Florida Supreme Court has stated that when tax assessments are void, they may be enjoined at any time. [Lake Worth Towers, Inc. v. Gerstung, 262 So.2d 1 \(Fla.1972\)](#); see also [Neptune Hollywood Beach Club, Inc. v. Markham, 473 So.2d 691 \(Fla. 4th DCA 1985\)](#). In the instant case, the appellees argued in their motion to dismiss that the property appraiser had no authority to assess their interest in leasehold improvements as real property. Consequently, appellees were alleging that the taxes the tax collector sought to collect were void. See [Lake Worth Towers, Inc. v. Gerstung, 262 So.2d at 4](#). For the foregoing reasons, we affirm.

[FN1](#). The statute provides:

No action shall be brought to contest a tax assessment after 60 days from the date the assessment being contested is certified for collection under s. 193.122(2), or after 60 days from the date a decision is rendered concerning such assessment by the property appraisal adjustment board if a petition contesting the assessment had not received final action by the property appraisal adjustment board prior to extension of the roll under s. 197.0134.

ZEHMER JOANOS and THOMPSON