

LEONARD J. ACCARDO and  
LYNN M. ACCARDO, et. al.,

Plaintiffs,

vs.

CASE NO.: 06-1064 CA

GREGORY S. BROWN, Property Appraiser  
of Santa Rosa County, Florida and  
ROBERT G. McCLURE, Tax Collector  
for Santa Rosa County, Florida,

Defendants.

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**DEFENDANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT  
BASED ON COLLATERAL ESTOPPEL AND RES JUDICATA**

Defendant, GREGORY BROWN, in his capacity as Property Appraiser of Santa Rosa County, Florida (the "Property Appraiser"), and ROBERT McCLURE, in his capacity as Tax Collector of Santa Rosa County, through the undersigned counsel, file this Motion for Partial Summary Judgment Based on Collateral Estoppel and Res Judicata.

1. In this case, the Plaintiffs challenge the Property Appraiser's assessment of land and buildings for purposes of real property ad valorem taxation. The Plaintiffs do not challenge the valuations of their properties. Instead, the Plaintiffs allege that their properties are not subject to any local government ad valorem taxation whatsoever.

2. The Defendants have asserted numerous affirmative defenses, including collateral estoppel and res judicata. The Defendants now seek partial summary judgment with respect to

the affirmative defenses of collateral estoppel and res judicata, as they relate to the assessment of real property taxes on the **buildings and improvements** to land, including all condominium units owned by Plaintiffs. The Defendants do not seek summary judgment in this motion for partial summary judgment against those owning **land** only or those plaintiffs who would challenge an assessment of land underlying non-condominium improvements.<sup>1</sup>

3. For tax years 2002 through 2005, the majority of the Plaintiffs in the case at bar were also class members in similar suits, specifically, Case Nos. 02-918-CA, 03-837-CA, 04-857-CA, and 05-1039-CA. In those cases, the class of taxpayers having interests in real property improvements on Navarre Beach entered into a Stipulated Judgment of Dismissal. See Exhibit A. Those class action lawsuits addressed only real property improvements and condominium units.

4. Having entered into the Stipulated Judgment of Dismissal in the above-referenced cases, all Plaintiffs who were class members in those cases are now barred from again challenging the assessment of real property taxes on their improvements and condominium units on Navarre Beach. Therefore, summary judgment is appropriate against all Plaintiffs who were members of any one of the referenced class action lawsuits to the extent that the assessments at issue involve local government ad valorem tax assessments of real property improvements and/or condominium units.

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<sup>1</sup> As noted in the previously filed Motion to Dismiss, however, the Defendants do contend that this Court lacks subject matter jurisdiction for all portions of the assessments, including land, if the Plaintiffs owning such interests failed to tender taxes on the portion of the assessment attributable to improvements. *See* §194.171 (Fla. Stat. 2005).

## MEMORANDUM OF LAW

The Defendants have asserted affirmative defenses of collateral estoppel and res judicata. The essential elements for collateral estoppel are that the parties and issues are identical and that the particular matter was fully litigated and determined in a contest which rendered a final decision. *Dept. Of Health and Rehabilitative Services v. BJM*, 656 So.2d 906 (Fla. 1995). The doctrine of collateral estoppel applies to preclude litigation of any issue previously litigated. Similarly, the doctrine of res judicata applies to preclude a claim or cause of action that has been previously decided. *Selim v. Pan American Airways*, 889 So.2d 149, 153 (Fla. 4<sup>th</sup> DCA 2004). Under the doctrine of res judicata, neither party to the previous action shall be allowed to call into question and re-litigate the thing decided. *Id.*

In this case, the issue previously litigated was whether the improvements constructed on long-term government leaseholds and the condominium units on Navarre Beach were subject to local government real property ad valorem taxes. In *Ward v. Brown*, 919 So.2d 462 (Fla. 1<sup>st</sup> DCA 2005), the First District Court of Appeal held that the improvements and condominium units at issue were equitably owned by the plaintiffs and were fully taxable as real property for purposes of local governmental ad valorem taxation. *Ward v. Brown* addressed the assessment of improvements on Navarre Beach for tax year 2001. The original *Ward v. Brown* case was not brought as a class action for the tax year 2001.

In subsequent years, however, class action suits were filed on behalf of all plaintiffs having interests in real property improvements and condominium units on Navarre Beach. Specifically, in Cases No. 02-918-CA, 03-837-CA, 04-857-CA, and 05-1039-CA, class actions were filed challenging the assessment of improvements and condominium units. Based on the

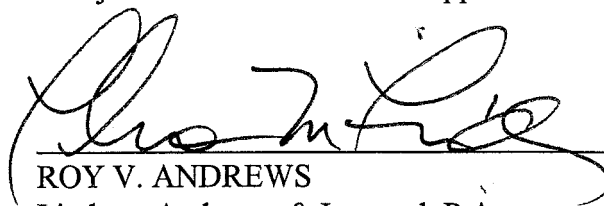
holding in *Ward v. Brown*, 919 So.2d 462 (Fla. 1<sup>st</sup> DCA 2005), the parties in those class action suits, including various condominium associations, decided to forego a final hearing and instead entered into a Stipulated Judgment of Dismissal. The Stipulated Judgment of Dismissal provided that local government real property ad valorem taxes were properly assessed on the improvements and condominium units owned by all members of the plaintiff class.

The Plaintiffs stipulated on behalf of all class members that local governmental real property taxes were due, without the need of a trial or summary judgment hearing. No class member protested that Stipulated Judgment of Dismissal, after proper notice was given under Fla.R.Civ.P. 1.220(e). The Stipulated Judgment of Dismissal triggers the application of the doctrines of res judicata and collateral estoppel as to all members of the plaintiff class. See *Horton v. Metropolitan Life Ins. Co.*, 20 Fla.L.Weekly D179 (M.D.Fla. 2006).

Generally, when a plaintiff dismisses claims pursuant to a stipulated judgment of dismissal, further claims on the same issue against the same defendants are barred. *Lomelo v. American Oil Co.*, 256 So.2d 9 (Fla. 4<sup>th</sup> DCA 1971). Consent judgments are entitled to the same preclusive, res judicata effect as any other judgment issued by a court. *Arrieta-Giminez v. Arrieta-Negron*, 551 So.2d 1184 (Fla. 1989). In this case, the Stipulated Judgment reflects in Paragraph One that it is a “Final Judgment.” It further reflects that the “Plaintiffs shall take nothing by this action and the Defendants shall go hence without day . . . .” Consequently, there is no question that the document constitutes a final judgment. Therefore, the doctrines of res judicata and collateral estoppel bar the class members in Cases 02-918-CA, 03-837-CA, 04-857-CA, and 05-1039-CA, from re-litigating the issue of the assessment of the improvements to real property and condominium units involved in the case at bar. See *Dept. of Revenue v. Accredited*

This rule has been applied to bar successive challenges to property tax assessments. In *Dept. of Revenue v. Eastern American Technologies Corp.*, 762 So.2d 1044 (Fla. 5<sup>th</sup> DCA 2000), for example, a lessee of governmental property (seeking the same statutory exemption sought by the plaintiffs in this case) filed a lawsuit in 1992 claiming that it was not subject to property tax. The court held otherwise. When a challenge was subsequently made, relating to the validity of the same tax assessments, the appellate court held that such claims were barred by res judicata. *Id.* at 1047. Similarly, in this case, the doctrines of collateral estoppel and res judicata bar further litigation on the assessment of the improvements and condominium units.

WHEREFORE, the Property Appraiser and Tax Collector respectfully requests that, if this Court denies the Defendants' Motion to Dismiss for Lack of Subject Matter Jurisdiction, that the Court grant summary judgment on the grounds of res judicata and collateral estoppel on the grounds herein stated.

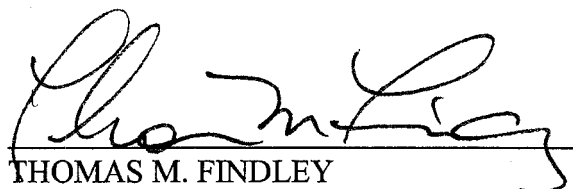


ROY V. ANDREWS  
Lindsay, Andrews, & Leonard, P.A.  
P.O. Box 586  
Milton, FL 32572  
(850) 623-3200  
Florida Bar Number 228291

ELLIOTT MESSER  
FL Bar No: 054461  
THOMAS M. FINDLEY  
FL Bar No: 0797855  
Messer, Caparello, & Self, P.A.  
Post Office Box 1876  
Tallahassee, Florida 32302-1876  
(850) 222-0720  
Counsel for Property Appraiser

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and correct copy of the foregoing has been furnished by facsimile and U.S. Mail to: M.J. Menge, Esq., and Danny L. Kepner, Esq., Shell, Fleming, Davis & Menge, P.A., 226 South Palafox Street, 9th Floor, Pensacola, FL 32502 this 9 day of January, 2007.

  
THOMAS M. FINDLEY

IN THE CIRCUIT COURT OF THE FIRST  
JUDICIAL CIRCUIT, IN AND FOR SANTA  
ROSA COUNTY, FLORIDA

LEWIS Y. and BETTY T. WARD, et al.,

CASE NO.: 02-918-CA; 03-837-CA;  
04-857-CA; 05-1039-CA  
CLASS REPRESENTATION

Plaintiffs,

vs.

GREGORY S. BROWN, Property Appraiser  
of Santa Rosa County, Florida and  
ROBERT G. McCLURE, Tax Collector  
for Santa Rosa County, Florida,

Defendants.

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**STIPULATED JUDGMENT OF DISMISSAL**

This cause came before the Court on the parties' application and in response to the Plaintiffs' proposed dismissal of the pending class actions in the above-referenced cases. The Court, having reviewed the motion and file, and being advised of the parties' stipulation, hereby ORDERS and ADJUDGES as follows:

1. Final Judgment is entered in favor of the Defendants. The Plaintiffs shall take nothing by this action and the Defendants shall go hence without day and recover costs from Plaintiffs in the amount of \$4,112.89.
2. The stay that had been in effect as a matter of law during the pendency of this action by the authority of Section 194.171, Florida Statutes, is lifted. As a result of this judgment, each member of each Plaintiff class is directed to pay all outstanding ad valorem taxes challenged in Cases Number 02-918-CA, 03-837-CA, 04-857-CA, and 05-1039-CA, in the

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amounts assessed for each year at issue, plus 12% interest from the time that such taxes were originally due in each of the relevant tax years.

3. This Judgment shall not preclude the Plaintiffs or class representatives from challenging assessments for future years (2006 and beyond) based on changed factual circumstances or subsequent court decisions or statutory changes.

DONE and ORDERED in Chambers, Santa Rosa County, Milton, Florida this 18  
day of July, 2006.

~~RON SWANSON~~  
**RON SWANSON**  
CIRCUIT JUDGE

cc: Counsel of Record