

IN THE CIRCUIT COURT IN AND FOR SANTA ROSA COUNTY, FLORIDA

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

Plaintiffs

vs.

CASE NO:06001064CA

GREGORY S. BROWN, PROPERTY
APPRAISER FOR SANTA ROSA COUNTY,
FLORIDA, and ROBERT G. McCLURE, TAX
COLLECTOR FOR SANTA ROSA COUNTY,
FLORIDA,

Defendants.

_____ /

**REPLY TO AFFIRMATIVE DEFENSES AND MOTION TO
STRIKE CERTAIN AFFIRMATIVE DEFENSES**

Plaintiffs reply to the affirmative defenses asserted by defendants in their answer and allege:

FIRST AFFIRMATIVE DEFENSE:

Denied. Further, plaintiffs allege (a) the issue of equitable ownership of plaintiffs' leasehold improvements was previously argued and considered in Bell v. Bryan, 505 So.2d 690 (Fla. 1st DCA), rev. den., 513 So.2d 1060 (Fla. 1989), and Bell v. Bryan, 519 So.2d 1024 (Fla. 1st DCA 1988); (b) any asserted conveyance to plaintiffs of equitable ownership by Escambia County, Florida, is void ab initio, or voidable by this Court, because such violates the prohibition against such conveyance in the deed from the United States, Exhibit A to plaintiffs' complaint, which is incorporated herein by reference; and (c) the decision of the First District Court of Appeal in Burklow & Associates, Inc. v.

Brown, 931 So.2d 218 (Fla. 1st DCA 2006) is binding on defendants and precludes assessment and/or collection of real property taxes on a mere leasehold interest in real estate owned by a subdivision of the State.

SECOND AFFIRMATIVE DEFENSE:

Denied.

THIRD AFFIRMATIVE DEFENSE:

Denied that plaintiffs have any obligation to allege or prove the payment of any taxes as asserted by defendants, and all other allegations of this defense are likewise denied.

FOURTH AFFIRMATIVE DEFENSE:

Subject to plaintiffs' motion to strike certain affirmative defenses, plaintiffs admit that they have alleged that §196.199, Fla. Stat. (2006), directs that their possessory interest in the improvements and the parcels of real property owned by Escambia County, Florida, shall be taxed only as intangible personal property, and deny any and all other allegations of the fourth affirmative defense.

FIFTH AFFIRMATIVE DEFENSE:

Subject to plaintiffs' motion to strike certain affirmative defenses, plaintiffs admit they rely on the Florida Legislature's definition of intangible personal property in §199.023, Fla. Stat. (2006), to include all leasehold or other possessory interests in real property owned by any political subdivision of the state, with certain exceptions and qualifications, and on the Florida Legislature's directive found in §196.199(2)(b), Fla. Stat. (2006), that such leasehold or other

interest shall be taxed only as intangible personal property as part of the basis for their claim that their leasehold or possessory interests in the improvements and the land itself may be assessed only as intangible personal property; and deny the remainder of the fifth affirmative defense.

SIXTH AFFIRMATIVE DEFENSE:

As stated in their reply to the fourth affirmative defense and subject to their motion to strike, plaintiffs admit they rely in part on §196.199(2)(b), Fla. Stat. (2006) in their claim that the leasehold improvements and the land itself should be assessed as intangible personal property, and deny the remainder of the sixth affirmative defense.

SEVENTH AFFIRMATIVE DEFENSE:

Subject to their motion to strike certain affirmative defenses, plaintiffs admit they have alleged that §196.199, Fla. Stat. (2006), directs that their possessory interests in the land and leasehold improvements shall be taxed only as intangible personal property. Plaintiffs deny the remainder of the seventh affirmative defense.

EIGHTH AFFIRMATIVE DEFENSE:

Subject to their motion to strike certain affirmative defenses, plaintiffs admit they have alleged that §196.199, Fla. Stat. (2006), directs that their possessory interests in the land and leasehold improvements shall be taxed only as intangible personal property. Plaintiffs deny the remainder of the eighth affirmative defense.

NINTH AFFIRMATIVE DEFENSE:

Denied.

TENTH AFFIRMATIVE DEFENSE:

Plaintiffs admit that the property appraiser at the time was not a party in the case of Bell v. Bryan, 505 So.2d 690 (Fla. 1st DCA 1987), rev. den. 513 So.2d 1060 (Fla. 1987), but reallege that John R. Jones, who was property appraiser for Escambia County at the time, intervened and was made a party plaintiff in the case of Bell v. Bryan, 519 So.2d 1024 (Fla. 1st DCA 1988). Plaintiffs further assert that their interests were identical to those of the plaintiffs in the Bell v. Bryan cases.

Plaintiffs admit that the issues in the Bell v. Bryan cases were different, in that the property appraiser and tax collector in those prior cases were attempting to assess and collect real property taxes only on the leasehold improvements, not on the land itself. The holdings of the Bell v. Bryan cases are, nonetheless, binding on the parties and issues involved in this case. Plaintiffs deny all contrary allegations in the tenth affirmative defense.

ELEVENTH AFFIRMATIVE DEFENSE:

Plaintiffs admit they have alleged theories based on stare decisis. Plaintiffs deny the remainder of the eleventh affirmative defense.

TWELFTH AFFIRMATIVE DEFENSE:

Denied.

MOTION TO STRIKE CERTAIN AFFIRMATIVE DEFENSES

Plaintiffs move to strike Defendants' Fourth Affirmative Defense, Fifth Affirmative Defense, Sixth Affirmative Defense, Seventh Affirmative Defense, and Eighth Affirmative Defense on the grounds that the allegations contained in these Affirmative Defenses constitute challenges to the constitutionality of the Florida Statutes cited therein and the Defendants are ministerial public officers who have no standing to challenge the constitutionality of statutes defining property for purposes of taxation or how such properties should be taxed.

WHEREFORE, Plaintiffs reply to the Affirmative Defenses asserted by Defendants, move to strike certain Affirmative Defenses, and renew their prayer for the relief contained in their Complaint.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Reply to Affirmative Defenses and Motion to Strike Certain Affirmative Defenses has been furnished to Elliott Messer and Thomas M. Findley, of Messer, Caparello & Self, P.A., 2618 Centennial Place, Tallahassee, FL. 32308, and Roy Andrews, Esquire, Lindsay, Andrews & Leonard, P.A., 5218 Willing Street, Milton, FL. 32570, by U.S. Mail, this ___ day of January, 2007.

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