

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

JAMES F. BAIR and JOYCE P. BAIR, et al,

Plaintiffs

vs.

CASE NO: 09-2212CA01-OTH

GREGORY S. BROWN, Property
Appraiser for Santa Rosa County,
Florida, STAN C. NICHOLS, Tax
Collector for Santa Rosa County
Florida, and SANTA ROSA COUNTY,
FLORIDA,

Defendants.

_____ /

COMPLAINT

Plaintiffs, whose names are listed on Schedule A attached hereto and made a part hereof, sue Defendants, Gregory S. Brown, Property Appraiser for Santa Rosa County, Florida ("Property Appraiser"), Stan C. Nichols, Tax Collector for Santa Rosa County, Florida ("Tax Collector"), and Santa Rosa County, Florida ("SR County"), and allege:

General Allegations

1. This is an action for a declaratory judgment, estoppel and injunctive relief pursuant to Chapter 86 and Chapter 194, Florida Statutes, and general law.

2. Plaintiffs are in doubt as to whether the Defendant Property Appraiser and Defendant Tax Collector have the authority to appraise their leasehold interests in properties located on Navarre Beach, Florida, which are owned by Escambia County, Florida, as real property and to collect real property

taxes assessed on their leasehold interests. In addition, plaintiffs are in doubt as to whether their subleases from Defendant Santa Rosa County create any ownership interest in the land or in the improvements, in said properties on Navarre Beach.

3. A portion of Santa Rosa Island, including the lands at Navarre Beach, Florida, was conveyed by the United States of America to Escambia County, Florida, on January 15, 1947, by deed recorded in Deed Book 248 at page 161 of the public records of Escambia County, Florida. This deed granted Escambia County authority to use or lease the conveyed lands but never to be otherwise disposed of or conveyed by it. A copy of this deed is attached hereto as Exhibit "A".

4. The property at Navarre Beach was leased by the Santa Rosa Island Authority ("SRIA"), as an agency of Escambia County, Florida, to Santa Rosa County, Florida, on February 11, 1956, pursuant to that certain lease agreement recorded in Deed Book 438 at page 180 of the public records of Escambia County, Florida, a copy of which is attached hereto as Exhibit "B".

5. In 1991, the Florida Legislature revised the boundary line between Escambia and Santa Rosa Counties resulting in the property at Navarre Beach being included within the boundary lines of Santa Rosa County, Florida.

6. Plaintiffs have leasehold interests in various properties located on Navarre Beach, Santa Rosa County, Florida, by virtue of subleases they or their

sublessors, or their predecessor sublessees or sublessors, entered into with Santa Rosa County or its agent, Santa Rosa County Beach Administration.

7. Attached to this Complaint as exhibits hereto are copies of the following subleases:

A. The Residential Lease between the Santa Rosa County Beach Administration and John H. Barry and wife, Marguerite M. Barry dated December 16, 1969. (Exhibit "C").

B. The Single-Family Residential Lease Amended and Restated between Santa Rosa County, Florida and L.A. Plauche and Tracy M. Plauche, husband and wife, dated July 19, 1997. (Exhibit "D").

C. The Lease Agreement between Santa Rosa County Beach Administration and Garland H. Jarvis and Isolina Jarvis dated March 31, 1968, and Addenda to said agreement dated October 25, 1985. (Composite Exhibit "E").

D. Restated and Amended Lease Agreement between Santa Rosa County Beach Administration and James M. Ready dated April 19, 1979, and First Amendment to said agreement dated October 8, 1981. (Composite Exhibit "F").

E. Condominium Lease between Santa Rosa County Beach Administration and Leonard Kaplan, as Trustee, dated April 24, 1974, and First Amendment to said agreement dated September 5, 1978. (Composite Exhibit "G").

F. Lease Agreement between Santa Rosa County Beach Administration and Navarre Beach Marina Corporation dated May 16, 1960. (Exhibit "H").

Instead of attaching copies of all the Plaintiffs' leases, the foregoing exhibits are attached hereto pursuant to Florida Rules of Civil Procedure 1.130(a) to show the lease provisions common to most of the respective undeveloped land, residential, townhouse and condominium leases which are material to this Complaint.

8. Escambia County, Florida, is the owner of the properties at Navarre Beach, Florida, which are subleased to the Plaintiffs.

9. The original term of all of the Plaintiffs' subleases is for a period of less than one hundred years. The leased premises are undeveloped or predominantly used for commercial or residential purposes. All of the Plaintiffs are required to pay lease or rental payments for the subleased premises pursuant to the terms of the respective subleases.

10. The Florida Legislature has defined leasehold estates of less than one hundred years in governmentally owned property, which are undeveloped or predominantly used for residential or commercial purposes, and upon which rental payments are due, as intangible personal property and has directed that such leasehold estates are to be taxed only as intangible personal property.

11. Notwithstanding the statutes enacted by the Florida Legislature, the Property Appraiser has appraised the Plaintiffs' leasehold and possessory

interests in the properties owned by Escambia County, Florida, as real property and has certified the appraised value of those leasehold estates for taxation in 2009 as real property, and the Tax Collector has levied real property taxes for 2009 on said leasehold estates and is attempting to collect real property taxes from the Plaintiffs on their leasehold estates.

12. Plaintiffs seek a declaration that their leasehold interests in the properties located on Navarre Beach, Florida, have been defined by the Florida Legislature as intangible personal property for purposes of taxation; that the properties are owned by Escambia County, Florida; that the Property Appraiser's appraisal of the Plaintiffs' leasehold and possessory interests in the properties on Navarre Beach as real property, and the Property Appraiser's certification of said leasehold interests as being subject to county real property taxes were and are improper, illegal and void acts; and that the Tax Collector's levying and collecting real property taxes on said leasehold estates were and are improper, illegal and void acts.

13. Further, Plaintiffs allege that the Defendant Property Appraiser should be estopped from appraising their leasehold estates as real property and that the Defendant Tax Collector should be estopped from collecting real property taxes on the appraised value of their leasehold estates.

14. Plaintiffs also seek an injunction against the Property Appraiser enjoining the appraisal of their leasehold estates as real property, and against the Tax Collector enjoining the collection of county real property taxes assessed

on the appraised value of their leasehold estates, enjoining the sale of tax certificates and tax deeds to collect such taxes, and a refund of any real property taxes paid by any of the Plaintiffs.

15. Plaintiffs further seek a declaration that, in entering into the sublease agreements with plaintiffs and/or their predecessor lessees, SR County did not intend or purpose to convey or transfer ownership to any lessee of property at Navarre Beach.

16. In addition, plaintiffs ask for a declaration that SR County had no authority, right, or power to convey or transfer ownership to plaintiffs as lessees of property at Navarre Beach.

17. Plaintiffs also seek a declaration that SR County has not entered into perpetual leases with plaintiffs.

18. Venue is proper in this County by virtue of Section 194.171(1), Florida Statutes, and SR County's common-law "home venue privilege." See, Florida Public Service Comm'n v. Triple "A" Entertainment, Inc., 387 So.2d 940 (Fla. 1980).

19. This Court has original jurisdiction of this matter pursuant to Sections 26.012(2)(e), 86.011, 86.061, 125.15, 197.122 and 194.171(1), Florida Statutes. This action has been timely filed.

Parties

20. Defendant Gregory S. Brown is the County Property Appraiser ("Property Appraiser") for the County of Santa Rosa , State of Florida.

21. Defendant Stan C. Nichols is the County Tax Collector ("Tax Collector") for the County of Santa Rosa , State of Florida.

22. Defendant Santa Rosa County, Florida ("SR County") is a political subdivision of the State of Florida.

23. The Plaintiffs who are parties to this Complaint are listed on Schedule A.

COUNT I

Declaratory Judgment As To Property Appraiser and Tax Collector

24. Plaintiffs reallege the allegations contained in paragraphs 1 through 23 above as if fully set forth herein.

25. The properties on Navarre Beach subleased to the Plaintiffs are owned by Escambia County, Florida.

26. The Plaintiffs' leasehold and possessory interests in the properties on Navarre Beach owned by Escambia County, Florida, have been defined by the Florida Legislature as intangible personal property, and the Florida Legislature has directed that such leasehold or possessory interests are to be taxed only as intangible personal property.

27. The State of Florida has exclusive jurisdiction to tax intangible personal property. The Property Appraiser has no authority to define property for purposes of taxation and neither the Property Appraiser nor the Tax Collector is authorized to assess and collect county real property taxes on property defined by the Florida Legislature as intangible personal property.

28. Plaintiffs do not owe real property taxes on their leasehold estates as the assessment of real property taxes on the leasehold estates is contrary to statute and Florida law and is void. Plaintiffs, in good faith, do not admit that any real property taxes are owed on their leasehold estates. Plaintiffs have otherwise complied with all conditions precedent to the filing of this action and have paid all taxes legally assessed on Plaintiffs' leasehold estates.

29. The action of the Property Appraiser in appraising the Plaintiffs' leasehold and possessory interests in the properties subleased by Plaintiffs as real property and the action of the Tax Collector in billing and collecting county real property taxes on the appraised value of their leasehold estates are illegal, null and void.

30. Because of the acts of said Defendants alleged herein, Plaintiffs are presently in doubt as to their rights and liabilities and are entitled to have such doubts resolved through this action.

31. Plaintiffs are obligated to pay their undersigned attorneys a reasonable fee for their services in this litigation.

WHEREFORE, Plaintiffs request that this Court enter judgment for the Plaintiffs declaring that:

- (a) Plaintiffs' leasehold estates in the properties located on Navarre Beach, have been defined by the Florida Legislature and by law as intangible personal property and are to be taxed only as intangible personal property.

- (b) the properties located on Navarre Beach are owned by Escambia County, Florida,
- (c) the Property Appraiser's appraisal of the Plaintiffs' leasehold and possessory interests in the properties on Navarre Beach as real property, and the Property Appraiser's certification of said leasehold estates as being subject to county real property taxes were and are improper, illegal and void acts, and
- (d) the Tax Collector's levying and collecting real property taxes on Plaintiffs' leasehold estates were and are improper, illegal and void acts,

and ordering any real property taxes paid by Plaintiffs be refunded.

Plaintiffs further pray for an award of their attorneys' fees pursuant to Section 57.105, Florida Statutes, and costs and expenses incurred in this lawsuit.

COUNT II

Injunction

32. Plaintiffs reallege the allegations contained in paragraphs 1 through 23 and 25 through 31 above as if fully set forth herein.

33. As alleged hereinabove, the Property Appraiser has no authority to appraise as real property those properties which have been defined by the Florida Legislature as intangible personal property, and the Tax Collector has no authority to collect real property taxes on properties which have been defined by the Florida Legislature as intangible personal property. Such actions by the

Property Appraiser and Tax Collector are contrary to law and are improper, illegal and void.

34. Unless enjoined, the Property Appraiser will continue to illegally appraise Plaintiffs' leasehold and possessory interests in the properties on Navarre Beach, Florida, owned by Escambia County, as real property and certify the Plaintiffs' leasehold estates for taxation as real property and the Tax Collector will continue to issue real property tax bills and attempt to collect real property taxes from Plaintiffs on the appraised value of their respective leasehold estates.

35. Unless the Property Appraiser is restrained and enjoined from appraising the Plaintiffs' leasehold estates as real property, and the Tax Collector is restrained and enjoined from collecting county real property taxes on the appraised value of their leasehold estates, Plaintiffs will suffer irreparable harm for which they have no adequate remedy at law.

WHEREFORE, Plaintiffs pray that this Court enter judgment for the Plaintiffs enjoining the Property Appraiser from appraising Plaintiffs' leasehold estates and possessory interests in the properties on Navarre Beach owned by Escambia County, Florida, as real property, and from certifying said leasehold estates as being subject to county real property taxes, and enjoining the Tax Collector from levying and collecting county real property taxes on said leasehold estates.

Plaintiffs further pray for an award of their attorneys fees pursuant to Section 57.105, Florida Statutes, and costs and expenses incurred in this lawsuit.

COUNT III

Injunction

36. Plaintiffs reallege the allegations contained in paragraphs 1 through 23, 25 through 31, and 33 through 35 above as if fully set forth herein.

37. As alleged above, the Property Appraiser has appraised Plaintiffs' leasehold estates as real property and the Tax Collector has levied real property taxes on Plaintiffs' leasehold estates.

38. The Tax Collector has taken the position that these real property taxes create a lien on Plaintiffs' leasehold estates and the properties subleased by Plaintiffs and that the Tax Collector is authorized to sell tax certificates and tax deeds to collect the real property taxes that the Tax Collector alleges are owed on the Plaintiffs' leasehold estates.

39. Section 196.199(8)(a), Florida Statutes (2009), provides that any and all taxes assessed on leasehold interests in governmental property, with certain exceptions inapplicable to this case, shall not become a lien on the same, or the property itself, but shall constitute a debt due and shall be recoverable by legal action or by the issuance of tax executions that shall become a lien upon any other property in any county of this State of the taxpayer who owes said tax.

40. Section 197.432(9), Florida Statutes (2009), prohibits the creation of a lien on property owned by the government which has become subject to taxation due to its lease to a nongovernmental lessee. That section reads, in part, as follows:

"A certificate may not be sold on, nor is any lien created in, property owned by any governmental unit the property of which has become subject to taxation due to lease of property to a nongovernmental lessee. The delinquent taxes shall be enforced and collected in the manner provided in section 196.199 (8)."

41. Rental payments are due under the terms of the subleases that created the Plaintiffs' leasehold estates on which the Tax Collector has levied real property taxes.

42. Plaintiffs' leasehold estates fall within the definition of the leaseholds described in Section 199.023(1)(d), Florida Statutes (2005), in that they are a) leases of governmentally owned properties, b) the original terms of which are less than 100 years, exclusive of renewal options, c) the leaseholds are undeveloped or used predominately for commercial or residential purposes, and d) rental payments are due under the terms of the subleases pursuant to which they hold possessory interests in said properties.

43. Section 196.199(8)(a), Florida Statutes (2009) provides an exclusive procedure for the collection of taxes assessed on all private leaseholds of governmentally owned real property on which rental payments are due under the terms of the lease agreement.

44. The real property taxes assessed on Plaintiffs' leasehold estates by the Tax Collector do not create a lien on Plaintiffs' respective leasehold estates or on the properties subleased by Plaintiffs, and the Tax Collector is not authorized

to issue tax certificates or tax deeds to collect the real property taxes assessed against Plaintiffs' leasehold estates.

45. Unless enjoined, the Tax Collector will sell tax certificates and tax deeds to collect the allegedly delinquent 2009 and future real property taxes levied on Plaintiffs' leasehold estates.

46. Unless the Tax Collector is restrained and enjoined from selling tax certificates and tax deeds to collect the real property taxes levied on Plaintiffs' leasehold estates, Plaintiffs will be irreparably harmed for which they have no adequate remedy at law.

WHEREFORE, Plaintiffs request that this Court enter judgment for the Plaintiffs declaring that: a) real property taxes levied by the Tax Collector on the Plaintiffs' leasehold estates in the properties on Navarre Beach owned by Escambia County or on the properties subleased by Plaintiffs do not and shall not create liens on Plaintiffs' leasehold estates or on the properties subleased by the Plaintiffs, and b) Section 196.199(8)(a), Florida Statutes (2009), establishes the exclusive procedure for collection of taxes levied on all private leaseholds of governmentally owned real property on which rental payments are due under the terms of the lease agreement, and enjoining the Tax Collector from selling tax certificates and tax deeds to collect the real property taxes levied on Plaintiffs' leasehold estates.

Plaintiffs further pray for an award of their attorneys fees pursuant to section 57.105, Florida Statutes, and costs and expenses incurred in this lawsuit.

COUNT IV

Estoppel

47. Plaintiffs reallege the allegations contained in paragraphs 1 through 23, 25 through 31, 33 through 35, and 37 through 46 above as if fully set forth herein.

STARE DECISIS

48. The doctrine of stare decisis is applicable to this case and requires that prior decisions by Florida's appellate courts holding that leasehold estates for original terms of less than one hundred years in governmentally owned properties, such as Plaintiffs' leasehold estates in this case, are to be taxed as intangible personal property are not to be disregarded.

A. In Bell v. Bryan, 505 So.2d 690 (Fla. 1st DCA 1987), rev. den. 513 So.2d 1060 (Fla. 1987), the First District Court of Appeal ruled that leasehold estates in governmentally owned properties, such as Plaintiffs' leasehold estates, had been defined by the Florida Legislature as intangible personal property.

B. In Bell v. Bryan, 519 So.2d 1024 (Fla. 1st DCA 1988), the First District Court of Appeal affirmed its previous decision in Bell v. Bryan, 505 So.2d 690 (Fla. 1st DCA 1987), rev. den. 513 So.2d 1060 (Fla. 1987), and again held that the property appraiser had no authority to appraise leasehold estates in governmentally owned properties as real property and that the real property taxes the tax collector sought to collect were void.

C. There has been no substantive change in the Florida statutes that were existing as of the date that the First District Court of Appeal rendered its decisions in the two aforementioned cases of Bell v. Bryan, supra.

RES JUDICATA

49. Defendants Property Appraiser and Tax Collector are barred by the doctrine of res judicata from appraising the Plaintiffs' leasehold estates as real property and from collecting real property taxes on Plaintiffs' leasehold estates.

50. There is an (a) identity of the thing sued for; (b) identity of cause of action; (c) identity of persons and parties to actions; and (d) identity of quality or capacity of persons for or against whom claim is made in this case and the cases of R.D. Bryan, et al v Matt Langley Bell, III, Tax Collector for Escambia County, Florida, et al, Case No: 84-1911, in the Circuit Court in and for Escambia County, Florida, which was appealed and reported as Bell v. Bryan, 505 So.2d 690 (Fla. 1st DCA 1987), rev. den. 513 So.2d 1060 (Fla. 1987), and Matt Langley Bell, III, as Tax Collector of Escambia County, Florida v. Don Bryan, et al., Case No: 86-678, in the Circuit Court in and for Escambia County, Florida, which case was appealed and reported as Bell v. Bryan, 519 So.2d 1024 (Fla. 1st DCA 1988).

51. Plaintiffs being in privity with or being virtually represented by the lessees in Bell v. Bryan, supra, are entitled to judgment barring said Defendants from appraising their leasehold estates as real property and from collecting real property taxes on Plaintiffs' leasehold estates.

COLLATERAL ESTOPPEL

52. Defendants Property Appraiser and Tax Collector are collaterally estopped from appraising Plaintiffs' leasehold estates as real property and from collecting real property taxes on such Plaintiffs' leasehold estates.

53. There is an (a) identity of the thing sued for; (b) identity of persons and parties to actions; and (c) identity of quality or capacity of persons for or against whom claim is made in this case and the cases of R.D. Bryan, et al v Matt Langley Bell, III, Tax Collector for Escambia County, Florida, et al, Case No: 84-1911, in the Circuit Court in and for Escambia County, Florida, which was appealed and reported as Bell v. Bryan, 505 So.2d 690 (Fla. 1st DCA 1987), rev. den. 513 So.2d 1060 (Fla. 1987), and Matt Langley Bell, III, as Tax Collector of Escambia County, Florida v. Don Bryan, et al., Case No: 86-678, in the Circuit Court in and for Escambia County, Florida, which case was appealed and reported as Bell v. Bryan, 519 So.2d 1024 (Fla. 1st DCA 1988).

54. Plaintiffs being in privity with or being virtually represented by the lessees in Bell v. Bryan, supra, are entitled to judgment barring said Defendants from appraising their leasehold estates as real property and from collecting real property taxes on Plaintiffs' leasehold estates.

WHEREFORE, Plaintiffs pray that Defendants Property Appraiser and Tax Collector be estopped from appraising Plaintiffs' leasehold estates as real property and from collecting real property taxes on the basis of the appraised value of Plaintiffs' leasehold estates, and Plaintiffs further pray for the entry of an order as requested hereinabove declaring the actions of the Property Appraiser

and Tax Collector to be improper, illegal, and void, and for the entry of an order as requested hereinabove enjoining the Defendants from appraising the Plaintiffs' leasehold estates as real property and from collecting real property taxes on Plaintiffs' leasehold estates.

Plaintiffs further pray for an award of their attorneys fees pursuant to Section 57.105, Florida Statutes, and costs and expenses incurred in this lawsuit.

COUNT V

Declaratory Judgment As To County

55. Plaintiffs reallege the allegations contained in paragraphs 1 through 23 and 25, above, as if fully set forth herein.

56. The parcels at Navarre Beach in which plaintiffs have leasehold interests by virtue of their subleases with SR County are listed in Exhibit "I" attached hereto.

57. At no time has SR County owned any of the property at Navarre Beach that it has subleased to plaintiffs or their predecessors, as listed in Exhibit "I".

58. At no time has SR County had the authority, right, or power to convey or transfer ownership of any of the property at Navarre Beach referred to in Exhibit "I".

59. When it entered into the sublease agreements with plaintiffs or their predecessor lessees, SR County did not intend or purpose to convey or

transfer ownership, equitable or otherwise, to any such lessee of property at Navarre Beach.

60. Each of the sublease agreements between SR County and plaintiffs or their predecessor lessees, is for a specified term of years, including any renewals thereof, and none contains any provisions establishing a perpetual existence for such subleases.

61. Because of the acts of the Property Appraiser and Tax Collector as alleged herein, and because of the decision of the First District Court of Appeal in Ward v. Brown, 919 So.2d 462 (Fla. 1st DCA 2005), plaintiffs are presently in doubt as to their rights and liabilities under the sublease agreements with SR County and are entitled to have those doubts resolved through this action.

WHEREFORE, plaintiffs request that the Court enter judgment for the plaintiffs, declaring that:

(a) Plaintiffs have no ownership interest in the property at Navarre Beach that they sublease from SR County.

(b) SR County had no authority, right, or power to convey or transfer ownership, equitable or otherwise, to plaintiffs as lessees of property at Navarre Beach.

(c) In entering into the sublease agreements with plaintiffs and/or their predecessor lessees, SR County did not intend or purpose to convey or transfer ownership, equitable or otherwise, to any lessee of property at Navarre Beach.

(d) None of the subleases to plaintiffs or their predecessor lessees establish a perpetual existence for any such sublease.

DANNY L. KEPNER
Bar No: 174278
THOMAS J. GILLIAM, JR.
Bar No: 146821
Shell, Fleming, Davis & Menge, P.A.
226 South Palafox Street, 9th Floor
Pensacola, Florida 32502
Telephone 850-434-2411
Fax No: 850-435-1074
Attorneys for Plaintiffs