



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

LEONARD J. ACCARDO, et al.

Appellants,

vs.

CASE NO. 1D10-4072

GREGORY S. BROWN, as Property Appraiser
of Santa Rosa County, Florida, *et al.*

Appellees.

**APPELLEES' RESPONSE IN OPPOSITION TO
MOTION FOR REHEARING AND/OR CLARIFICATION**

Appellees GREGORY S. BROWN, Property Appraiser for Santa Rosa County, and STAN NICHOLS, Tax Collector for Santa Rosa County, pursuant to Rule 9.330 of the Florida Rules of Appellate Procedure, hereby respond in opposition to the Motion for Rehearing and/or Clarification filed by Appellants LEONARD J. ACCARDO and LYNN M. ACCARDO, et al. For the reasons that follow, this Court should deny the instant Motion.

I. RESPONSE TO MOTION FOR REHEARING

Rule 9.330 provides that a motion for rehearing "shall state with particularity the points of law or fact that, in the opinion of the movant, the court has overlooked or misapprehended in its decision, and shall not present issues not previously raised in the proceeding." As the Fifth District stated in *Cleveland v.*

State, 887 So. 2d 362, 364 (Fla. 5th DCA 2004):

Motions for rehearing are strictly limited to calling an appellate court's attention—without argument—to something the appellate court has overlooked or misapprehended. The motion for rehearing is not a vehicle for counsel or the party to continue its attempts at advocacy.

(quotations and citations omitted).

Appellants' motion for rehearing reargues points of fact and law that were thoroughly briefed and argued before this Court. In fact, all of the points raised in the motion for rehearing have been argued not only in the prior case, but also in other prior cases. *Ward v. Brown*, 919 So. 2d 462 (Fla. 1st DCA 2005); *Alvin's Stores et al. v. Jones*, No. 07-0149 (Fla. 1st DCA Oct. 22, 2007)(per curiam); *Portofino Condominium Assoc. v. Jones*, No. 07-2298 (Fla. 1st DCA Aug. 5, 2008)(per curiam); *AMFI v. Jones*, No. 08-0402 (Fla. 1st DCA Oct. 28, 2008)(per curiam).

This Court has dealt thoroughly with all of the points now raised. The same points have been raised by numerous lawyers over the past decade. The points have been raised in trial courts and appellate courts; in individual cases and in class action cases. The Appellants' motion contains absolutely nothing that was overlooked or misapprehended. Instead, the motion contains the same advocacy on the same points that have been argued over the past decade. The governmental entities involved submit that this Court's opinion is thorough and correct.

Therefore, this matter should be put to rest.

A. The Court Did Not Misapply the *Robbins* Case.

Appellants argue that this Court’s decision is “irreconcilable” with *Robbins*, based on their allegation that they have no option to obtain legal title to the realty. This is classic re-argument, which was repeated in the Appellants’ brief and at oral argument. *See Appellants’ Initial Brief, p. 28-29.* Appellants’ contention that this Court misapplied *Robbins* is simply an expression of their disagreement with the holding in this case.

In any event, this Court did not overlook or misapprehend *Robbins* or any other case addressing the issue of equitable ownership. In fact, this Court cited *Robbins* in the opinion and also expressly rejected the Appellants’ argument that *Robbins* requires an option in all instances to establish equitable ownership:

Thus, instead of having an option to purchase at the end of their lease terms, the majority of Appellants have the option to renew their leases for additional ninety-nine-year terms. All of these factors lead us to the conclusion that the trial court properly determined that Appellants are the equitable owners of the real property at issue for ad valorem taxation purposes.

Slip op. at 8.

In addressing the Appellants’ argument head on, the Court relied on the binding decision in *Ward v. Brown*, 919 So. 2d 462 (Fla. 1st DCA 2005). This Court concluded that *Ward* controls the instant matter, and that, with regard to the taxation of the underlying property, the factors relied upon by the *Ward* court in

determining equitable ownership apply to Appellants' interest in the underlying property. The Appellants' argument contradicts *Ward's* conclusion that the law can confer equitable ownership under many possible scenarios, including those involving extremely long term leaseholds, as in the case of Navarre Beach, and also "any other circumstances from which equitable ownership can be found." *Ward*, 919 So. 2d at 464 (citing *Parker v. Hertz*, 544 So. 2d 249 (Fla. 2d DCA 1989) (involving a 25 year lease in which the title remained in the landlord after the lease term). In analyzing all of these cases, this Court directly addressed all of the Appellants' arguments.

B. The Court Did Not Misapply the Test of Equitable Ownership.

Appellants next incorrectly argue that this Court somehow misapplied *Ward* to the instant case, because many of the factors supporting equitable ownership are found in other types of long term leases. Again, this is an argument that has been made in every case involving Santa Rosa Island over the past decade. This Court did not overlook the argument. In fact, this Court's opinion identified these factors and more, based on the nearly identical analysis in *Ward*. See Slip op. at 6-9. This Court relied on all of the relevant factors in concluding that Appellants are the equitable owners of the underlying land and improvements for ad valorem taxation purposes.

C. This Court's Opinion Addressed the Necessary Issues.

Appellants next contend that this Court failed to address the trial court's determination that the Florida Statutes regarding tax assessment and collection should apply to these equitably owned interests just like any other real property. In determining that these interests were equitably owned, the Court determined that these interests should be treated just as all other property subject to ad valorem taxation. Thus, these interests are subject to the same assessment and collection statutes that apply to other real property.

The Tax Collector has conceded that any tax certificates, in the event there is a non-payment of the assessed taxes, will apply only to the Plaintiffs' private interests. Therefore, there will be no lien on the government's interest. This is no different than the treatment given in the private foreclosure context on Santa Rosa Island. Thus, the Appellants' feigned concern for Escambia County's legal title is unjustified. Certainly, Escambia County, the party who has bare legal title, has not raised any concerns regarding this issue. In the final analysis, these interests that are equitably owned are subject to imposition of ad valorem taxes, requiring the same assessment and collection mechanisms as all other realty.¹

¹ Appellees note that the Appendix filed with Appellants' motion purports to include examples of a tax certificate and a tax deed for a parcel. *See* Mot. for Reconsideration at 3. In fact, the tax certificate and tax deed in the Appendix contain information relating to a taxpayer who was not a plaintiff in the underlying case. Therefore, the documents have no bearing on this appeal.

II. RESPONSE TO MOTION FOR CLARIFICATION

Rule 9.330, Florida Rules of Appellate Procedure, provides that “[a] motion for clarification shall state with particularity the points of law or fact in the court’s decision that, in the opinion of the movant, are in need of clarification.” Contrary to Appellants’ assertions, nothing in this Court’s opinion requires clarification.

A. The Opinion Does Not Require Clarification Concerning the Appellants’ Leases.

Appellants contend that some of the lease language in certain of the Appellants’ leases is different from those leases addressed in the opinion. Yet, the opinion addressed those leases that the Appellant acknowledged to contain provisions in “common” to all of the leases. The Appellants alleged in their First Amended Complaint that the leases they attached to the Complaint contain “lease provisions common to most of the respective underdeveloped land, residential, townhouse and condominium leases which are material to this Complaint.” R2-V2-200 (*par.* 7).

All of the leases that the Appellants attached to their Complaint contained terms of 99 years with options to renew for 99 more years. Most of the leases then included options for “further renewals” on like terms after that 198 year period. R2-V2-200. The Appellants conceded that these were representative leases of all. This is consistent with Appellants’ prior representations in multiple court proceedings that Lewis and Betty Ward (the original lead plaintiffs in *Ward v.*

Brown) had leases representative to all. The Wards were adjudicated to be class representatives for all, when stipulated judgments were entered in tax years 2002-2005. R3-V1-69; R1-V2-4 (*Ward Depo.*, p. 7). The Wards' lease term and renewal are also like all of the other leases in setting an initial term of 99 years with options to renew for multiple 99 year periods after that.

The Appellants have represented to courts that the Wards represent all Navarre Beach property owners. In fact, courts have actually entered judgments based on that representative capacity. For the Appellants to now say that the Wards do not actually represent all, or that their pleadings in this case were false, in alleging that the leases attached to the Complaint were representative, should not be tolerated.

B. This Court Should Decline to Engage in Appellants' Series of "What If" Questions.

Appellants pose a number of hypothetical questions in this section of their motion. None of these issues were raised in their Complaint or on appeal. Appellants candidly admit that "the Court is not obligated to answer these questions." Mot. P. 5. Having not raised any of these issues to date, no party has briefed these issues. This notion of raising new issues for the first time on a motion for rehearing and/or clarification is clearly barred by this Court's precedent. Certainly, Appellants have not stated any points of law or fact in the opinion, which the movant believes are in need of clarification, as required by Rule

9.330. Appellants respectfully urge this Court to grant attorneys' fees to the Appellees for this violation of the Court's rules.

C. This Court Was Not Required to Reach the Constitutional Issues.

The Appellants ask this Court to rule on the constitutionality of the statutes at issue. The Appellees have cited abundant Florida Supreme Court precedent, holding that the Appellants seek an exemption that is not authorized by the Florida Constitution. In declining to rule on this argument, this Court held:

Because we agree with the trial court that Appellants are the equitable owners of both the real property and improvements and are subject to ad valorem property taxes as such, we do not reach the issue of standing or the constitutionality of the tax exemption.

Slip op. at 2. Appellants seek clarification, and a written opinion, on the issue of the constitutionality of the Appellants' construction of the taxing statutes at issue, as well as whether the Tax Collector has standing to challenge the constitutionality of these statutes.

This Court was well within its power to affirm the trial court's decision that the Appellants are the equitable owners of both the real property and improvements, and are thus subject to ad valorem property taxes, without reaching the issues of standing or constitutionality. In fact, it is a "settled principle of constitutional law that courts should not pass upon the constitutionality of statutes if the case in which the question arises may be effectively disposed of on other grounds." *State v. Iacovone*, 660 So. 2d 1371, 1373 (Fla. 1995); *State v.*

Covington, 392 So. 2d 1321, 1322-23 (Fla. 1981).

III. CONCLUSION

WHEREFORE, Appellees respectfully request that this Court deny the Appellants' Motion for Rehearing and/or Clarification.

Respectfully submitted this 13 day of May, 2011.



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing sent by U.S. Mail to Danny L. Kepner, Esq., Shell, Fleming, Davis & Menge, P.A., 226 South Palafox Street, 9th Floor, Pensacola, FL 32502, and Talbot D'Alemberte and Patsy Palmer, D'Alemberte & Palmer PLLC, Post Office Box 10029, Tallahassee, FL 32302-2029, on this 13 day of May, 2011.


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