

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

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
STAN NICHOLS, Tax Collector
for Santa Rosa County, Florida,
Defendants.

**ORDER GRANTING DEFENDANTS'
MOTION FOR SUMMARY JUDGMENT AND
DENYING PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT
AND ENTRY OF FINAL JUDGMENT**

THIS MATTER came on for hearing before the Court upon both the Plaintiffs' motion for summary judgment and the Defendants' motion for summary judgment. The Court having reviewed the motions, record evidence, and the memoranda filed in support and opposition to the motion, having heard argument of counsel, and being otherwise fully advised in the premises, it is hereby **ORDERED AND ADJUDGED THAT:** The Defendants' Motion for Summary Judgment is granted. The Plaintiffs' Motion for Summary Judgment is denied. In support of this Order, the Court makes the following findings of fact:

FACTUAL FINDINGS.

1. The land presently underlying the Plaintiffs' improvements was conveyed by the United States of America to Escambia County in 1947. That portion of the island known as Navarre Beach was later leased to Santa Rosa County for 99 years with automatic renewals for

additional 99-year periods in perpetuity. *Lease Agreement between Santa Rosa Island Authority, an agency of Escambia County, and Santa Rosa County, dated February 11, 1956; Par. 6.* The Escambia-Santa Rosa agreement provides that the lease "shall automatically be renewed" for an additional 99 years, plus "further renewals." *First Amended Complaint, Ex. B.*

2. In the case at bar, the Plaintiffs have property interests in land, improvements and condominium units on Navarre Beach. These interests have been obtained as the result of subleases, assignments and/or conveyances of the land described in the Escambia-Santa Rosa agreement. Generally, such interests are conveyed for a term of 99-years with one or more options to renew for additional 99-year terms. *See Complaint and Lease Exhibits attached thereto.*

3. All of the Plaintiffs' interests at issue in this action are used for purely private purposes. The Plaintiffs enjoy the capital appreciation and rental income derived from these interests. The Plaintiffs have the right to convey their interests without restraint; they have the right to encumber their properties with mortgages; they bear all of the risks of ownership; they bear the responsibility for insurance, maintenance and repair; and they are typically responsible by the terms of the lease documents for taxes imposed upon their interests. The County, in contrast, does not does bear any of the burdens typically associated with ownership of real property.

4. Several of the Plaintiffs in this action have sued the Property Appraiser for each tax year since 2001. Plaintiffs Lewis and Betty Ward, and Richard and Linda Coley, initially sued the Property Appraiser to challenge their 2001 ad valorem tax assessment. On March 18, 2004, this Court rejected the Plaintiffs' arguments and determined that the Property Appraiser had correctly assessed their real property on Navarre Beach. *See Ward v. Brown Order Granting*

Defendants' Amended Motion for Summary Judgment and Entry of Final Judgment, Case No. 01-892-CA-DJ (March 18, 2004). The First District Court of Appeal affirmed in *Ward v. Brown*, 919 So. 2d 462 (Fla. 1st DCA 2005).

5. For tax years 2002 through 2005, these same Plaintiffs Ward and Coley again sued. For these tax years, however, Ward and Coley were named as class representatives for the entire class of taxpayers holding real property interests on Navarre Beach. Plaintiffs Ward and Coley asserted that their individual claims presented common questions of fact and law for all real property interests on Navarre Beach. This Court agreed and made a finding that Ward and Coley presented common questions of fact and law. *See Order Granting Conditional Class Certification*, Case No. 02-918-CA (Dec. 3, 2002) (similar orders were also issued in Case Nos. 03-837-CA, 04-857-CA and 05-1039-CA).

6. After the First District issued its opinion in *Ward v. Brown* in 2005, the class of taxpayers having interests in real property improvements and condominium units on Navarre Beach agreed to a Stipulated Judgment of Dismissal for tax years 2002-2005. Judge Swanson executed this final judgment on July 18, 2006. *See Stipulated Judgment of Dismissal*, Case Nos. 02-918, 03-837, 04-857 and 05-1039 (July 18, 2006). By such order, each member of the Plaintiff class was directed to pay ad valorem taxes.

7. Notwithstanding *Ward v. Brown* and the Stipulated Judgment of Dismissal for subsequent tax years, these Plaintiffs and many others now have filed the instant action to contest ad valorem taxes assessed for tax year 2006 through 2009.

8. The parties agree and the Court finds that there are no disputed questions of fact. Therefore, the factual record in its totality stands as submitted in the voluminous filings of the parties in support of their cross motions for summary judgment.

CONCLUSIONS OF LAW.

1. Introduction.

Plaintiffs argue that their interests are to be classified as intangibles. Accordingly, they argue that they are exempt from real property ad valorem taxation. Exemptions from ad valorem tax must be “strictly construed” against the parties claiming such exemptions. *Sebring Airport Authority v. McIntyre*, 642 So.2d 1072, 1073 (Fla. 1994).

The Supreme Court of Florida, in an interlocutory appeal in *Ward v. Brown*, 894 So.2d 811 (2003)(*Brown I*), addressed the question of whether a subgroup of the same Plaintiffs in this case were seeking an exemption. The Supreme Court of Florida concluded: “We also reject the petitioners’ claim that they are not claiming an exemption.” *Id.* at 816. The Supreme Court stated: “It is apparent that petitioners are seeking some form of the ‘exemption’ related to government-owned and leased property.” *Id.* Therefore, their claims must be strictly construed. This Court must also follow the principle that substance controls over technical form in matters relating to the imposition of taxes.

II. Application of *Ward v. Brown*.

In *Ward v. Brown*, Case No. 01-892-CA01-DJ, this Court held on March 18, 2004, that a subgroup of the same Plaintiffs in this action were the equitable owners of their improvements for ad valorem tax purposes. See *Ward* Order at p. 9. The *Ward* Order was affirmed by the First District Court of Appeal. *Ward v. Brown*, 919 So.2d 462 (Fla. 1st DCA 2005). In *Ward v. Brown*, this Court concluded that these Plaintiffs bore virtually all of the relevant benefits and burdens of ownership. On appeal, the First District affirmed, holding: “Because we agree with the trial court that appellants have sufficient rights and duties regarding the property to make

them equitable owners, we affirm.” *Ward v. Brown*, 919 So.2d at 463 (citing *Serv. Metro Corp. v. Bell*, 786 So.2d 1216 (Fla. 1st DCA 2001) and *Leon County Educ. Facilities Auth. v. Hartsfield*, 698 So.2d 526 (Fla. 1997)).

After the First District Court of Appeal opinion was written in *Ward v. Brown*, this Court held six more times that the interests of the leaseholders on Navarre Beach and Pensacola Beach are subject to real property ad valorem taxation. These orders and appellate decisions are outlined below:

A. *Ward v. Brown*, 2002-CA-918. The Plaintiffs, including many of the Plaintiffs in the case at bar, held long term leaseholds on Navarre Beach. The case proceeded as a class action with individuals and condominium associations proceeding on behalf of the classes. The parties entered a Stipulated Judgment of Dismissal on July 18, 2006, affecting tax years 2002-2005. **See Second Request for Judicial Notice, Tab B (Stipulated Judgment).**

B. *Alvin's Stores et al. v. Jones*, Case No. 2004-CA-2281. The trial court entered summary judgment on behalf of the Property Appraiser Chris Jones and the Tax Collector Janet Holley. The trial court's ruling was affirmed by the First District Court of Appeal. *See Alvin's Stores v. Jones*, No. 07-0149 (Fla. 1st DCA Oct. 22, 2007)(per curiam). **See Second Request for Judicial Notice, Tab C-1 (trial court order) and C-2 (appellate decision).**

C. *Portofino v. Jones*, Consolidated Case Nos. 2004-CA-2288; 2005-CA-2311; 2006-CA-2370. The trial court entered summary judgment on behalf of the Property Appraiser Chris Jones and the Tax Collector Janet Holley. The trial court's ruling was affirmed by the First District Court of Appeal. *See Portofino Condominium Assoc. v. Jones*, No. 07-2298 (Fla. 1st DCA Aug. 5, 2008)(per curiam). **See Second Request for Judicial Notice, Tab D-1 (trial court order) and D-2 (appellate decision).**

D. *American Fidelity v. Jones*, 2004-CA-2292. This Plaintiff is an insurance company that owns a number of condominiums on Santa Rosa Island. The trial court entered summary judgment on behalf of the Property Appraiser Chris Jones and the Tax Collector Janet Holley on December 13, 2007. The trial court's ruling was affirmed by the First District Court of Appeal. *See AMFI v. Jones*, No. 08-0402 (Fla. 1st DCA Oct. 28, 2008)(per curiam). **See Second Request for Judicial Notice, Tab E-1 (trial court order) and E-2 (appellate decision).**

E. *1108 Ariola v. Jones*, Case No. 2004-CA-002290. The Plaintiffs, numbering in the thousands, owned real property interests on Santa Rosa Island. The trial court entered Final Summary Judgment on behalf of the Property Appraiser Chris Jones and the Tax Collector Janet Holley on December 18, 2009. That case is currently on appeal.

F. *Dunes Motel and Little Sabine v. Jones*, Case No. 2004-CA-002291. The Plaintiffs owned real property interests on Santa Rosa Island. The trial court entered summary

judgment on behalf of the Property Appraiser Chris Jones and the Tax Collector Janet Holley on March 22, 2010. The time for rehearing has not run on that decision.

This Court fully understands that the “per curiam affirmed” decisions noted above are not binding. Nevertheless, this Court has taken judicial notice of the decisions rendered in this trial court and finds them to be persuasive. All of these decisions have been decided in favor of the Property Appraisers and Tax Collectors named in those actions. The primary issue in these cases has been whether the Plaintiffs are the equitable owners of their improvements and condominium units. The only difference between the assessments at issue in the case at bar is the inclusion of raw land and land underlying improvements.

Like the plaintiffs in the prior cases, the Plaintiffs in this case enjoy the benefits and bear the burdens of ownership. The Plaintiffs enjoy the rental income and the right to capital appreciation on their interests, including the land. The Plaintiffs in this case bear the burdens of ownership, including the obligation to repair, maintain and insure their properties. They are also responsible for the payment of any and all taxes associated with their properties. These obligations are expressed in the terms of the leases filed in this case. Because the Plaintiffs bear all of essential burdens and benefits of ownership, *Ward v. Brown* dictates that the Plaintiffs are considered to be the owners of the improvements, the condominium units and the land, for real property ad valorem tax purposes. The Property Appraiser properly assessed local taxes on these equitably owned interests. Moreover, the Tax Collector has the right to sell tax certificates on these equitably owned interests of the Plaintiffs.

The Plaintiffs cite *Bell v. Bryan*, 505 So.2d 690 (Fla. 1st DCA 1987) in support of their claim for an exemption from taxation. The *Bell v. Bryan* decision, however, was expressly rejected by the First District in *Ward v. Brown*. The First District concluded: “We agree with [Property Appraiser Greg Brown] that *Bell v. Bryan*, 505 So.2d 690 (Fla. 1st DCA 1987), is not

controlling because **the issue of equitable ownership was not addressed.**" *Ward v. Brown*, 919 So.2d 464, n. 2. Whether the question of equitable ownership was raised in the trial court in the *Bell v. Bryan* litigation is not dispositive. In *Ward v. Brown*, the First District Court of Appeal cited to the appellate decision in *Bell v. Bryan*. It is apparent that the appellate decision in *Bell v. Bryan*, on its face, did not address the issues of equitable ownership or the constitutionality of the taxing rubric at issue.

The Supreme Court of Florida has held that the leaseholders on Santa Rosa Island have rights equivalent to fee ownership. In *Williams v. Jones*, 326 So. 2d 425, 436 (Fla. 1975), the Court held that the type of lease involved in this case "for a term of 99 years or more is **tantamount to ownership of the fee . . .**" (emphasis added). Similarly, the Supreme Court of Florida also held, in *Archer v. Marshall*, 355 So. 2d 781, 784 (Fla. 1978): "Since these leaseholders have the **equivalent of fee simple ownership**, it does not appear that they have enriched the county in any manner by building on the land."

The Supreme Court's conclusion that the 99-year leasehold interests on Santa Rosa Island are "tantamount to ownership of the fee" or the "equivalent of fee ownership" is well-founded. Section 196.199(7), Florida Statutes, which provides that lessees of governmental property for terms of 100 years or more are deemed to be the legal owners of such property, does not alter the conclusion that the improvements on Navarre Beach are equitably owned. The *Ward v. Brown* Court rejected the argument that section 196.199(7) precluded taxation of improvements. The *Ward v. Brown* Court cited *Hialeah, Inc. v. Dade County*, 490 So.2d 998 (Fla. 3d DCA 1986), *rev. denied*, 500 So.2d 544 (Fla. 1986), which had directly addressed the same argument based on section 196.199(7):

Section 196.199(7) merely establishes two exceptions to the general rule that leaseholds or other possessory interests in government owned property are subject to intangible personal property taxation . . . **The exceptions set forth in section**

196.199(7) do not guide this court's determination as to whether section 199.023(1)(f) applies in the first place, i.e., is the property government owned?

Id. at 1000 (emphasis added). Thus, the threshold question, irrespective of the term of the lease, is who is the equitable owner of the land and improvements. In *Hialeah*, the court concluded that the private lessee for a term of 30 years had beneficial ownership.

The *Parker v. Hertz* Court reached the same result in responding to this argument based on section 196.199(7):

[W]e do not perceive the sweep of the word "owned" appearing in section 196.199(2)(b) to be measurable exclusively by section 196.199(7). Section 196.199(7) is a legislative declaration, the purpose and effect of which are confined to its terms. **There is nothing within section 196.199(7) barring the examination of extrinsic criteria in deciding a question of ownership under section 196.199(2)(b).** See *Hialeah*

Parker, at 251 (emphasis added). Thus, irrespective of the conclusive presumption applicable to 100-year leases, the Court held that a private lessee for 25 years was "as a matter of law . . . endowed with sufficient indicia of ownership justifying the imposition of an ad valorem tax upon the improvements." *Id.* at 250.

In this case, the Court finds that the Plaintiffs bear the benefits and burdens of the ownership of the improvements, condominium units and land. Therefore, the Property Appraiser correctly assessed these interests on the real property tax rolls for purposes of local ad valorem taxation.

III. Constitutional Construction.

The Plaintiffs have moved to strike the Tax Collector's affirmative defense in which he contends that the taxing statutes cannot be applied in a manner consistent with the Florida and United States Constitutions, if such statutes are interpreted to allow the Plaintiffs to escape local real property taxes. The Plaintiffs first argue that *The Crossings at Fleming Island v. Echeverri*,

991 So. 2d 793 (Fla. 2008), bars the Tax Collector from asserting a challenge to the constitutionality of the statutes at issue. Plaintiffs rely on the general rule recited in *The Crossings*, which provides that a public official cannot challenge the constitutionality of a statute prescribing his duties.

This Court disagrees with Plaintiffs' reading of *The Crossings*. In that case, the Supreme Court of Florida determined that a **Property Appraiser** had no standing to challenge a taxing statute as unconstitutional under the defensive posture exception. In this case, the Property Appraiser is making no such challenge to the constitutionality of any statute and no party is relying on the so-called defensive posture exception to the general rule.

In any event, *The Crossings* does not affect the ability of the County and the Tax Collector to raise such a challenge for two reasons. First, it is clear that only the Property Appraiser is charged with the duty of granting or denying applications for ad valorem tax exemptions. Neither the Tax Collector nor the County bears any responsibility or duty involving the administration of these tax exemption statutes. Because the general rule barring challenges to statutes is limited to those entities that would challenge a statute affecting their duties, there is no prohibition that would bar the County or Tax Collector from challenging the tax exemption statutes at issue.

Second, the *Crossings* Court did not address the "public funds exception," which provides public officials involved in the collection and disbursement of funds with legal standing to challenge the constitutionality of statutes. *See Kaulakis v. Boyd*, 138 So.2d 505 (Fla. 1962). The *Crossings* Court held: "we decline to review whether the public funds exception is applicable to property appraisers wishing to challenge the constitutionality of statutes." *Crossings*, 991 So. 2d at 797. The County and the Tax Collector fall within the "public funds exception." The Tax

Collector is the constitutional officer charged with the duty to collect and disburse funds to the county, city, school boards and other taxing units. *See e.g.*, Art. VIII, §1(d), Fla. Const.; §197.332, Fla. Stat. (2009)(duties of tax collector include collection of all taxes, interest and costs); §197.383 (tax collector shall distribute taxes collected to each taxing authority); §197.3045 (in the context of deferred taxes and interest, tax collector shall distribute payments received); §1011.17 and 1011.18, Fla. Stat. (2009)(tax collector's duty to collect and disburse money to local schools); *see also* §192.091, Florida Statutes (tax collector receives commissions based on collections).

The First District Court of Appeal has confirmed that actions by a comptroller challenging a tax exemption statute are permitted under the public funds exception. *Green v. City of Pensacola*, 108 So.2d 897 (Fla. 1st DCA 1959). In *City of Pensacola*, the First District specifically held that the Comptroller had the authority to challenge a tax exemption statute. The Court cited the public funds exception as a clear and well defined exception to the principle that a ministerial officer cannot challenge the constitutionality of a statute prescribing his duties. “[T]he necessity of protecting the public funds is of paramount importance, and the rule denying to ministerial officers the right to question the validity of the Act must give way to a matter of more urgent and vital public interest.” *Id.* at 901. Thus, in *Green*, the Comptroller had standing to question the constitutionality of the statute that purported to exempt a party from taxation.

Having denied the motion to strike, the Court turns its attention to the construction of the applicable statutes in view of the requirements of the Florida and United States Constitutions. The Plaintiff's construction of Chapter 196, as imposing only intangibles tax upon their interests, would be unconstitutional for multiple reasons. The Plaintiffs' interpretation would (a) create a classification that would be discriminatory and violate the equal protection provisions of Article

I, section 2, of the Florida Constitution and the Fourteenth Amendment of the United States Constitution; (b) provide for an exemption in the absence of express constitutional authority in violation of Article VII, Section 3, of the Florida Constitution; (c) create a classification of properties for ad valorem taxation purposes that violates Article VII, Section 4, of the Florida Constitution; (d) fail to provide for taxation of the Plaintiffs' properties at a "uniform rate" in violation of Article VII, Sections 2 and 4, of the Florida Constitution; (e) impose a "state ad valorem tax" upon "real estate" in violation of Article VII, Section 1, of the Florida Constitution.

Ultimately, this Court must view all of these issues in light of the fundamental principle that, in a democracy, every person must bear their fair share of taxation. "We approach it on the premise that this is a democracy in which every parcel of property is expected to bear its due portion of the burden of government, unless exempted by the legislature in the manner provided by Section 1, Article X of the Constitution. Courts have no more important function than to direct the current of the law in harmony with sound democratic theory." 326 So. 2d 425, 429 (Fla. 1975)(quoting *Justice Terrell in Bancroft*).

Based on this principle, the Supreme Court of Florida has held that when governmental authorities lease realty to private parties for private use, such properties are subject to real property ad valorem taxation. *Straughn v. Camp*, 293 So. 2d 689, 695 (Fla. 1974). In addressing the taxation of Santa Rosa Island leases, the *Straughn* Court held that it is "the utilization of leased property from a governmental source that determines whether it is taxable under the Constitution." *Id.* The Court also held: "[I]n instances where the predominant use of governmentally leased land is for private purposes the Constitution requires that the leasehold be taxed." *Id.* at 696.

In *Williams v. Jones*, 326 So. 2d at 432, the Court confirmed that an unconstitutional result occurs when leaseholders on Santa Rosa Island pay intangibles tax and escape real property ad valorem taxation, while similarly situated residents on the mainland bear the full real property tax burden. In *Williams v. Jones*, the Court addressed the argument made by the Plaintiffs in this case, i.e., that such leaseholders should be taxed only at an intangible tax rate. The Court held: “Basically, the appellants [on Santa Rosa Island] contend for a constitutional **exemption** from ad valorem real estate taxation where none exists and, *if it did*, **such an exemption would undoubtedly be discriminatory and violative of the equal protection provisions of the Florida and United States Constitutions.**” *Id.* at 432. The Court specifically declared the policy of the State to place private leaseholders of public property “**on a parity** with other real property in the private sector devoted to similar uses.” *Id.* at 430 (emphasis added).

The *Williams v. Jones* Court queried whether properties on Santa Rosa Island should be exempt while similar properties were taxable, noting: “**No rational basis exists** for such a distinction.” *Id.* (emphasis added); *see also Sebring Airport Authority v. McIntyre*, 783 So.2d 238, 243 (Fla. 2001) (striking statute as unconstitutional where it attempted to define a private venture as serving a public purpose; the Court held: “[the statute] attempts to create an ad valorem tax exemption for private, profit-making ventures conducted upon property leased from a governmental entity – a result which the Florida Constitution does not allow.”)

These constitutional principles apply notwithstanding the 1980 revisions to the exemption statutes at issue. As the Supreme Court of Florida held in *Sebring*, in 2001, the *Williams v. Jones* case still provides the “guiding principles” for the constitutional doctrine that “all privately used property must bear the proper tax burden.” *Sebring*, 783 So. 2d at 243. The *Sebring* Court

quoted extensively from *Williams v. Jones*, calling it the landmark decision that "first enunciated the current 'governmental-governmental' standard." *Id.* at 246.

The Supreme Court of Florida has held that the Plaintiffs in this case are seeking an exemption. *Ward v. Brown*, 894 So.2d 811, 816 (2003)(*Brown I*). The Supreme Court of Florida, in *Williams v. Jones*, determined that no constitutional exemption exists for the Plaintiffs' claim. Even if such an exemption were authorized by the Florida Constitution, the Supreme Court of Florida has declared that it would violate the equal protection provisions of the Florida and United States Constitutions. Therefore, the Plaintiffs' claims for exemption must be rejected in light of these fundamental, constitutional principles.

IV. Summary.

Based on the foregoing, the Court finds that the Plaintiffs have equitable ownership of their interests, including the improvements, condominium units and land. The Florida Constitution requires that the Plaintiffs pay ad valorem taxes at local government rates at parity with other citizens of Santa Rosa County. Therefore, this Court grants the Defendants' Motion for Summary Judgment; denies the Plaintiffs' Motion for Summary Judgment; and enters Final Judgment in favor of the Defendants. The Plaintiffs shall take nothing by this action and the Defendants shall go hence without day. The Court reserves jurisdiction to consider the granting of costs in favor of the Defendants.

DONE and ORDERED this 13th day of July, 2010, in Milton, Santa Rosa County, Florida.

BY THE COURT:

/s/ Gary L. Bergosh
Judge Gary Bergosh

Original: Clerk
Copies to: Counsel