

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

1108 ARIOLA, LLC, et al.,

Appellants,

v.

CASE NO: 1D10-2050

CHRIS JONES, Property Appraiser
for Escambia County, Florida, and
JANET HOLLEY, Tax Collector for
Escambia County, Florida,

Respondents.

APPELLANTS' MOTION FOR CERTIFICATION

Appellants, 1108 Ariola LLC, et al., pursuant to Fla. R. App. P. 9.030 and 9.330, move for certification by this Court that the opinion filed in this matter on July 18, 2011:

- (a) Passes upon a question of great public importance; and
- (b) Directly conflicts with the decision of another district court of appeal.

ARGUMENT

I. GREAT PUBLIC IMPORTANCE

A. *A Significant Issue Is Involved Here.*

Appellants urge the Court to certify as a matter of great public importance this question: WHETHER EQUITABLE OWNERSHIP OF LEASEHOLD

IMPROVEMENTS CAN EXIST IF THE LESSEE DOES NOT HAVE EITHER
A PERPETUAL LEASE OR AN OPTION TO PURCHASE FOR A NOMINAL
VALUE?

This question arises because of the dual line of cases referred to in the opinion. *Ward v. Brown*, 919 So. 2d 462 (Fla. 1st DCA 2005), involved perpetual leases and cited several cases with similar leases, on which leasehold property has been subjected to ad valorem tax. As this Court expressed it, at p. 12 of the opinion:

In *Ward v. Brown*, this court emphasized the fact that the leaseholders in that case had the right to perpetual lease renewals, a factor which is not present in the case before us.

Since perpetual leases are not present here, the other line of cases comes into play. In *Robbins v. Mt. Sinai Medical Center, Inc.*, 748 So. 2d 349 (Fla. 3d DCA 1999), *rev. den.* 767 So. 2d 459 (Fla. 2000), the Third District held that the lessee in that case was not the equitable owner of the leased property at the end of the lease term.

The court expressly stated:

Florida courts have only granted a lessee equitable ownership of leased property when that lessee retained an option to purchase the leased property for *nominal value*. See *Leon County Educational Facilities Authority*, 698 So. 2d at 527 (lessee who could purchase a dormitory and food service project for one dollar deemed the project's equitable owner); *First Union National Bank of Florida v. Ford*, 636 So. 2d 523 (Fla. 5th DCA 1993) (lessee named equitable owner of leased property because title would pass automatically to lessee upon full payment of debt); *Hialeah, Inc. v. Dade County*, 490 So. 2d at 998 (lessee deemed equitable owner because lessee could purchase said

property for \$100 upon full payment of debt).

Robbins, 748 So. 2d at 351.

The *Robbins* court also cited, in support of its decision, *Metropolitan Dade County v. Brothers of the Good Shepherd, Inc.*, 714 So. 2d 573 (Fla. 3d DCA 1998), in which equitable ownership was held not to exist for the lessee, a charitable organization, under a 99-year lease from the City of Miami.¹ Although the charity was obligated to construct a building on the land and to pay any taxes levied on the property, it had no option to purchase the property, and was required to surrender the building and the land to the landlord at the end of the lease period. Citing nine different cases decided by Florida courts from 1959 to 1997, the Third District held that the absence of an option to purchase and the obligation to relinquish the property to the city at the end of the term led to the conclusion that “the lessee does not hold ‘virtually all the benefits and burdens of ownership’ of the property so as to render it its ‘equitable owner.’” *Id.*, at 573-4.

Clearly, in this case, there is no option for any lessee to purchase the improvements or the land at any price, let alone a nominal one. So, the question set out in the opening paragraph accurately describes an issue of great public importance this Court passed upon in the present case. Appellants pray for

¹ Municipal property is subject to ad valorem taxation unless used for an appropriate governmental purpose. County property, on the other hand, is immune from taxation. *Canaveral Port Authority v. Dept. of Revenue*, 690 So. 2d 1226, 1228 (Fla. 1996).

certification on that basis.

B. *A Number of People Will Be Affected.*

This case involves over 2,200 parcels, leased by 3,754 persons and entities all across the Pensacola Beach end of Santa Rosa Island, so a not insignificant number of the “public” are directly affected by the decision here. There are obviously many other leaseholds of government property granted to private parties, for non-public functions, throughout the state. This Court’s decision could potentially impact a substantial number of those lessees, since equitable ownership of the improvements may be found to exist even without a perpetual lease or an option to purchase for a nominal value. Clearly, this decision represents a shift in the law, in that *Ward v. Brown* declared *Bell v. Bryan*, 505 So. 2d 690 (Fla. 1st DCA 1987, (*Bell I*), inapplicable to the perpetual leases under consideration there, but this Court has now declared that *Bell I* is no longer good law.

A number of cases had acknowledged the existence of the authority of *Bell I*. The first, of course, was *Bell v. Bryan*, 519 So. 2d 1024 (Fla. 1st DCA 1988) (*Bell II*). In *Parker v. Hertz Corp.*, 544 So. 2d 249, 252 (Fla. 2d DCA 1989), the Second District distinguished the facts in *Bell I* from those before it in *Parker*: “In *Bell*, the immediate effect of the arrangement...vested ownership of such improvements in the county.” So, *Parker* recognized that its equitable ownership analysis did not apply to the leases on Pensacola Beach. *Marathon Air Services v. Higgs*, 575 So.

2d 1340, 1341 (Fla. 3d DCA 1991) also distinguished *Bell I*: “[T]he *Bell* court held that the improvements became part of the leasehold when constructed.” In 2005, this Court acknowledged that *Bell I* precluded ad valorem taxation of the Pensacola Beach leaseholds. *Quietwater Entertainment, Inc., v. Escambia County*, 890 So. 2d 525, 527 (Fla. 1st DCA) *rev. den.* 905 So. 2d 892 (Fla. 2005). *Broward County v. Eller Drive Ltd. Partnership*, 939 So. 2d 130, 132 (Fla. 4th DCA 2006), also acknowledged that in *Bell I*, “the improvements constructed on county-owned land belonged to the county and were not subject to ad valorem taxation...”

It should be considered a matter of great public importance that the authority of *Bell I* has been abrogated by this Court, and worthy of consideration by the Florida Supreme Court.

C. Appellants Face Taxation of the Leasehold Land.

This Court relied, in part, on the decision of another First District panel, when it cited, in two different places in the opinion, *Accardo v. Brown*, 36 FLW D856 (Fla. 1st DCA April 21, 2011). On July 18, 2011, the same day the decision in the instant action was signed, Appellee Chris Jones, Escambia County Property Appraiser, mailed a letter to each Pensacola Beach leaseholder declaring that, pursuant to the *Accardo* decision, he plans to include the leasehold land within each lessee’s assessment, in addition to the improvements. A copy of his letter is set out in the Appendix to this motion.

The *Accardo* case was certified by that panel of this Court as having passed upon a matter of great public importance,² thus setting up the potential that *Accardo*, (which involved taxation of leased land on Santa Rosa Island), will be reviewed by the Florida Supreme Court.

Judicial economy favors allowing the plaintiffs here to seek review in the Supreme Court, just as the *Accardo* plaintiffs have been allowed to do. The *Accardo* case will govern the question of taxation of land at both ends of the Island, whether reviewed by the Supreme Court or not. Equity and judicial economy will best be served by certifying the Court's decision here to the Florida Supreme Court so that all who will be affected by the Supreme Court's decision will have the opportunity to be heard.

II. THE PRESENT DECISION CONFLICTS WITH *ROBBINS*.

The case of *Robbins v. Mt. Sinai Medical Center, Inc.*, is discussed in Section I, Part A of this motion. Appellants urge this Court to certify that its decision here is in direct conflict with the *Robbins* case.

Robbins declares that "Florida courts have only granted a lessee equitable ownership of leased property when that lessee retained an option to purchase the leased property for *nominal value*." *Robbins*, 748 So. 2d at 351 (emphasis is original). *Ward v. Brown* is, of course, an exception to the rule stated in *Robbins*,

² "Whether *Section 196.199(2)(b), Florida Statutes*, is inapplicable to the real property at issue because appellants are the equitable owners of that property?"

but, as clearly set forth at page 12 of the opinion here:

In *Ward v. Brown*, this court emphasized the fact that the leaseholders in that case had the right to perpetual renewals, a factor which is not present in the case before us.

The present case does not, therefore, fall within the perpetual lease exception declared in *Ward v. Brown*, and there is of course no option to purchase at nominal value.

Respectfully, the opinion here is in direct conflict with *Robbins* and it should be so certified.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been furnished to Elliott Messer and Thomas M. Findley, of Messer, Caparello & Self, P.A., 2618 Centennial Place, Tallahassee, FL 32308, and Robert B. George, Christian P. George, and Katie L. Dearing, of Liles, Gavin, Constantino, George & Dearing, P.A. by electronic mail this 1st day of August, 2011.

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