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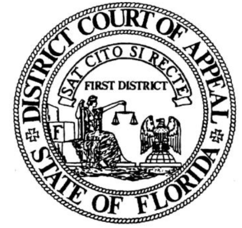


IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

1108 ARIOLA, LLC., *et al.*

Appellants,

vs. **CASE NO. 1D10-2050**

CHRIS JONES, as Property Appraiser
of Escambia County, Florida, *et al.*

Appellees.
_______________________________________/

APPELLEES' CONSOLIDATED RESPONSE IN OPPOSITION TO MOTIONS FOR CERTIFICATION FILED BY APPELLANTS 1108 ARIOLA, ET AL., AND ALBERT MARRETTA AND MAXINE CRAWLEY

Appellees CHRIS JONES, Property Appraiser for Escambia County, and JANET HOLLEY, Tax Collector for Escambia County, pursuant to Rule 9.330 of the Florida Rules of Appellate Procedure, hereby respond in opposition to the two Motions for Certification filed by (1) 1108 Ariola, LLC, et al.; and (2) Albert Marrett and Maxine Crawley. For the following reasons, this Court should deny the motions:

I. RESPONSE TO MOTION FOR CERTIFICATION ON THE GROUNDS THAT THE MATTER IS OF GREAT PUBLIC IMPORTANCE.

Appellants' motion for certification should be denied. The Appellants attempt to frame the question as relating to the impact of an option to purchase on the issue of equitable ownership. Irrespective of the answer to that question,

however, the Florida Supreme Court has ruled unambiguously on four occasions that the Santa Rosa Island properties are subject to local governmental ad valorem taxes. In all four cases, these same litigants on Santa Rosa Island had no option to purchase. Yet, the Court determined that they had rights tantamount to ownership. Therefore, at this juncture, certification of the question raised by Appellants would be a poor use of judicial resources.

On each of the four occasions in which the Florida Supreme Court has addressed these interests on Santa Rosa Island, the Court has ruled unambiguously that these privately held interests must be taxed at "parity" with other private property. *Williams v. Jones*, 326 So. 2d 425, 430 (Fla. 1975); *AMFI v. Kinney*, 360 So. 2d 415 (Fla. 1978); *Archer v. Marshall*, 355 So.2d 781, 785 (Fla. 1978)("fundamentally unfair for the Legislature to statutorily manipulate assessment standards and criteria to favor certain taxpayers over others"); *Straughn v. Camp*, 293 So. 2d 689 (Fla. 1974). The Court has noted that any statutory attempt to alter this result would be futile, because there is no "constitutional exemption" to support their theory.

> Basically, the appellants [on Santa Rosa Island] contend for a **constitutional exemption** from ad valorem real estate taxation **where <u>none exists</u> and, <u>if it did</u>, such an exemption would undoubtedly be discriminatory and violative of the equal protection provisions** of the Florida and United States Constitutions.

Williams, 326 So. 2d at 432 (emphasis added). The *Williams* Court also held:

> To accept the [beach homeowners'] contention . . . would not only result in such **leasehold interests being taxed on the reduced intangible personal property ad valorem rate** but would also **deprive the political subdivisions wherein the leaseholds are situated from raising revenues from such source in order to defray the costs of the services supplied to the users thereof, services which include, especially, the education of the children of such users.** The holder of a lease on Santa Rosa Island requires no less police protection or education than his or her neighbor in the county who occupies under a fee simple title.

Id. at 431 (emphasis added).

As noted by these cases, the lack of a "constitutional exemption" forecloses any attempt by the Legislature to exempt the Santa Rosa Island interests. The Florida Supreme Court continues to cite *Williams v. Jones* as setting forth the guiding principles in this context. For example, the Florida Supreme Court cited *Williams v. Jones* thoroughly, including citations to the passages above, in *Sebring Airport Authority v. McIntyre*, 783 So. 2d 238, 250 (Fla. 2001). The *Sebring* Court addressed another private interest attempting to rely on an unauthorized exemption, holding: "[The statute at issue] 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." *Id.*

Thus, no matter the outcome of the question for which certification is sought, the Appellants will still be subject to full ad valorem taxation at local government rates under the Florida Constitution. If this were not clear enough, this Court has addressed the issue at least six more times in the past decade on

additional, non-constitutional grounds. In these cases, the First District has held that the taxpayers are subject to local property taxes. *See Accardo v. Brown*, No. 1D10-4072 (Fla. 1st DCA April 21, 2010); *1108 Ariola v.* Jones, No. 1D10-2050 (Fla. 1st DCA July 18, 2011); *Ward v. Brown*, 919 So. 2d 462 (Fla. 1st DCA 2005); *AMFI v. Jones*, No. 08-0402 (Fla. 1st DCA Oct. 28, 2008)(per curiam); *Portofino Condominium Assoc. v. Jones*, No. 07-2298 (Fla. 1st DCA Aug. 5, 2008)(per curiam); *Alvin's Stores et al. v. Jones*, No. 07-0149 (Fla. 1st DCA Oct. 22, 2007)(per curiam).

Thus, the Appellants' contention that the case will have a significant impact is unfounded. The only people affected by the opinion in the case at bar are those condominium unit owners and other property owners on Navarre Beach and Pensacola Beach. These individuals have been allowed to avoid the payment of ad valorem taxes at local government rates for years, despite the many cases cited above that find that occurrence repugnant to the Florida Constitution. The impact suggested by the Petitioners on such cases as *Parker v. Hertz*, 544 So. 2d 249 (Fla. 2d DCA 1988) and *Marathon Air Services v. Higgs*, 575 So. 2d 1340 (Fla. 3d DCA 1991) is particularly confounding. In fact, those cases held that those particular lessees of governmental property were considered the owners of improvements for tax purposes, even though the taxpayers in those cases had no option to purchase those improvements. It is the greatest of ironies to suggest that two cases finding

that government lessees were owners for ad valorem tax purposes, even though they had no option to purchase, should support the certification of the question posed by Appellants.

In this case, no jurisprudential principle could be served by certifying the question to the Florida Supreme Court, when the Court has already concluded four times that the result sought by the Plaintiffs would be unconstitutional. In other words, irrespective of the question of an option, the Florida Supreme Court has already declared unambiguously that these Santa Rosa Island taxpayers must pay taxes at the full local governmental rates. There is "no constitutional exemption" that could support any other result. Any subsidiary question to be analyzed outside of the Florida Constitution would not be of "public importance." Therefore, the Court should decline to certify any question.

II. RESPONSE TO MOTION FOR CERTIFICATION ON THE GROUNDS THAT THE OPINION EXPRESSLY AND DIRECTLY CONFLICTS WITH OTHER CASES.

Appellants' motion for certification on the grounds of conflict jurisdiction also should be denied. To establish conflict jurisdiction, the Appellants must show the opinion at issue "directly and expressly conflicts" with another district court of appeal or the Florida Supreme Court on the same question of law. Art. V, §3(b)(3), Fla.Const.; Fla.R.App.P. 9.030(a)(2)(A)(iv). The Appellants ignore the only appropriate basis upon which the question of conflict jurisdiction turns, i.e., the

District Court's opinion. *Hardee v. State*, 534 So. 2d 706, 708 n.* (Fla. 1988) ("for purposes of determining conflict jurisdiction, this Court is limited to the facts which appear on the face of the opinion"); *Reaves v. State*, 485 So. 2d 829, 830 n.3 (Fla. 1986).

The Florida Supreme Court has declined jurisdiction when faced with the same argument on a prior occasion. After this Court decided *Ward v. Brown*, 919 So. 2d 462 (Fla. 1st DCA 2005), a subset of these same Appellants asked the Florida Supreme Court to accept jurisdiction based on the same case of *Robbins v. Mt. Sinai Medical Center*, 748 So.2d 349 (Fla. 3d DCA 1999). The Appellants argued that *Ward* "expressly and directly conflicts" with *Robbins*. *See Jurisdictional Brief of Petitioners*, Case Nos. SC05-1765, SC05-1766. The Florida Supreme Court "determined that it should decline to accept jurisdiction." *Order of Feb. 1, 2006*, Case Nos. SC05-1765, SC05-1766.

In the case at bar, this Court did not express any conflict with *Robbins*. In fact, the Court did not even cite *Robbins*. Thus, there is certainly no express conflict. Nor is there any implied conflict, as an option to purchase has never been a prerequisite to equitable ownership. Moreover, the facts of *Robbins* are far removed from 99-year leases with options to renew for additional 99 year periods. *See also Ward v. Brown; Marathon Air Services, Inc. v. Higgs*, 575 So. 2d 1340 (Fla. 3d DCA 1991); *Parker v. Hertz Corp.*, 544 So. 2d 249 (Fla. 2d DCA 1989)

(all finding lessees had ownership of realty without any option to purchase). In *Robbins*, the lessee had a so-called option (subject to "Lessor's approval") to purchase the equipment at "fair market value." *Id.* at 350. The Court held:

> Lessee does not qualify as an equitable owner of the properties. . . . Lessee did not have a true option to purchase the leased properties in the first place. By virtue of the properties' leases, Lessee could either purchase the properties for fair market value, return the properties to Lessor or renew the properties' leases for a new term. . . . any choice exercised by Lessee was subject to Lessor's approval. In essence, this was not an option to purchase . . .

Id. at 351-52. The debate was over whether the right could be characterized as a true option. The emphasis of the holding was that, *if* there was an option, it would have to be "*nominal*" to support equitable ownership. *Id.* at 351. Certainly, an illusory option on a short term equipment lease with a dubious "option" to buy at fair market value is distinguishable from the facts of this case.

The *Robbins* Court did not suggest the broad holding urged by Appellants. This is clear not only from *Ward, Marathon Air,* and *Parker*, which conferred ownership for tax purposes without any option to purchase, but also from numerous Supreme Court cases recognizing rights tantamount to ownership without any option to purchase. *See Williams v. Jones*, 326 So.2d 425, 436 (Fla. 1975)(lease on Santa Rosa Island "for a term of 99 years or more is **tantamount to ownership of the fee"**)(emphasis added); *Archer v. Marshall*, 355 So.2d 781 (Fla.

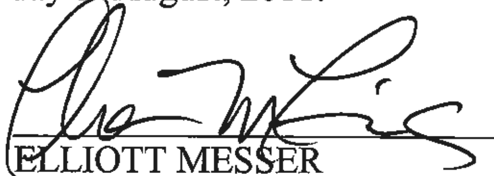
1978)(in context of Santa Rosa Island: "these leaseholders have the **equivalent of fee simple ownership**")(emphasis added).

In addition to the fact that this Court expressed no conflict with *Robbins,* the case is factually distinguishable. Thus, it cannot establish conflict jurisdiction. *Dept. of Revenue v. Johnston*, 442 So.2d 950 (Fla. 1983). This Court should deny the Appellants' Motion for Certification.

III. CONCLUSION

WHEREFORE, Appellees respectfully request that this Court deny the Appellants' Motion for Certification.

Respectfully submitted this 9th day of August, 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 the following on this 9th day of August, 2011:

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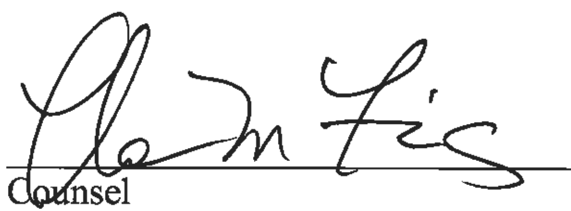

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