

IN THE CIRCUIT COURT IN AND FOR ESCAMBIA COUNTY, FLORIDA

1108 ARIOLA, LLC, et al.,

Plaintiffs

vs.

CASE NO: 2004-CA-002290

DIVISION: J

CHRIS JONES, PROPERTY
APPRAISER FOR ESCAMBIA COUNTY,
FLORIDA, and JANET HOLLEY, TAX
COLLECTOR FOR ESCAMBIA COUNTY,
FLORIDA,

Defendants.

_____ /

PLAINTIFFS' MOTION FOR SUMMARY FINAL JUDGMENT

Plaintiffs move this Court for entry of Summary Final Judgment in their favor in the above captioned case on the grounds that there are no disputed issues of fact and Plaintiffs are entitled to Summary Final Judgment in their favor as a matter of law.

In support of Plaintiffs' motion, Plaintiffs would show unto this Court that:

(1) Plaintiffs are the lessees or sublessees of various properties, including the land and the permanent improvements erected thereon, on Pensacola Beach, Escambia County, Florida, by virtue of leases issued by the Santa Rosa Island Authority ("SRIA"), on behalf of Escambia County, Florida.

(2) Title to the land on Pensacola Beach leased by SRIA to Plaintiffs and title to Plaintiffs' leasehold improvements erected on the land is vested in Escambia County, Florida, and Escambia County, Florida, is the legal and

equitable owner of the land and of all buildings and improvements erected or placed on the land at Pensacola Beach which are leased to Plaintiffs.

(3) Plaintiffs' possessory interests in their leasehold estates, including the buildings and improvements erected or placed on the leased land, have been classified as intangible personal property and are to be taxed only as intangible personal property.

(4) Defendant Chris Jones, as Property Appraiser of Escambia County, Florida, has appraised Plaintiffs' leasehold improvements as real property on Escambia County's 2004 tax roll, and Defendant, Janet Holley, as Tax Collector for Escambia County, Florida, has sought to collect real property taxes for 2004 on said leasehold improvements.

(5) Defendant Chris Jones, as Property Appraiser for Escambia County, Florida, has no authority to appraise Plaintiffs' leasehold improvements, which have been classified as intangible personal property by the Florida Legislature as real property, and Defendant, Janet Holley, as Tax Collector for Escambia County, Florida, has no authority to collect real property taxes on the appraised value of Plaintiffs' leasehold improvements.

(6) The Defendant, Janet Holley, as Tax Collector for Escambia County, Florida, has no authority to issue tax certificates to collect any taxes levied on the improvements owned by Escambia County, and leased to Plaintiffs, and the Defendant, Janet Holley, has no authority to create liens on Plaintiffs' leasehold improvements to collect such taxes.

(7) Plaintiffs are entitled to judgment declaring the real property taxes levied on their leasehold improvements invalid and enjoining the Defendants from appraising their leasehold improvements as real property, levying real property taxes on such improvements, issuing tax certificates to collect such taxes, and creating liens on Plaintiffs' leasehold improvements to collect such taxes. Plaintiffs are also entitled to a refund of any real property taxes paid by Plaintiffs for 2004 taxes levied on their leasehold improvements.

(8) The allegation that leaseholders on Pensacola Beach were the "equitable" or "beneficial" owners of their leasehold improvements was raised and litigated in the Bell v. Bryan cases.

(9) The attempt by Defendants to convert Plaintiffs into "equitable owners" of the improvements is based on a doctrine that is not applicable to the facts in this case. The Plaintiffs are not the equitable owners of the improvements that the Defendants have appraised and taxed as real property.

(10) Chapter 718, Florida Statutes, pertaining to the creation, sale and operation of condominiums does not convert those Plaintiffs who lease condominium units on Pensacola Beach into "equitable owners" of the condominium units they lease or subject such condominium units to real property ad valorem taxation as distinct units of ownership.

(11) Defendants are barred by the doctrine of *stare decisis* from relegating issues which have previously been settled by the judicial decisions rendered by this Court and the First District Court of Appeal in the Bell v. Bryan

cases. The Bell v. Bryan cases form a precedent to be followed in the instant case.

(12) Defendants are barred by the doctrine of *res judicata* from raising issues in the instant case that were raised or could have been raised in the Bell v. Bryan cases. The judgments rendered in the Bell v. Bryan cases are conclusive regarding the issues and affirmative defenses that Defendants have raised in their pleadings. The issue of "equitable ownership" and the constitutional challenges raised by Defendants, were raised or could have been raised in the Bell v. Bryan cases.

(13) Defendants are barred by the doctrine of collateral estoppel from relitigating issues which were determined by this Court and the First District Court of Appeal in the Bell v. Bryan cases. The issue of "beneficial" or "equitable" ownership was raised and determined in the Bell v. Bryan cases.

(14) Defendants are equitably estopped from appraising Plaintiffs' leasehold improvements as real property and from collecting real property taxes on such improvements. The Defendants notified Plaintiffs in August of 2004 that they intended to impose real property taxes on their leasehold improvements retroactive to January 1, 2004. Such delayed decision created substantial hardships for the Plaintiffs and was inequitable.

(15) Defendants lack standing to challenge the constitutionality of the Florida statutes defining Plaintiffs' leasehold interests in the land and improvements owned by Escambia County, Florida, as intangible personal

property and directing that such leasehold interests be taxed only as intangible personal property.

(16) The Florida statutes enacted by the Florida Legislature defining Plaintiffs' leasehold interests as intangible personal property, and directing that such leasehold interests be taxed only as intangible personal property are constitutional.

In support of this Motion for Summary Final Judgment, Plaintiffs rely upon the depositions of Chris Jones, as Property Appraiser for Escambia County, Florida, and Janet Holley, as Tax Collector for Escambia County, Florida, previously filed with this Court, the leases under the terms of which Plaintiffs derive their leasehold interests in the land and improvements owned by Escambia County, Florida, the affidavits of W. O. Wedel, Merrell Fairchild, William Spencer Mitchem, James M. Sheffer, Richard Brosnaham, Donald H. Partington, M. J. Menge, and Melisse K. Sellers filed with this Court, the documents and matters which Plaintiffs have requested this Court to take judicial notice, the Florida statutes and case law applicable to the issues raised by the Plaintiffs and Defendants in this case, and such other affidavits and evidence that Plaintiffs may file with this court prior to the final hearing on Plaintiffs' Motion for Summary Final Judgment.

WHEREFORE, Plaintiffs pray this Court will enter Summary Final Judgment in their favor in this matter.

CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the foregoing Motion for Summary Final Judgment and of the Affidavits of W. O. Wedel, Merrell Fairchild, William Spencer Mitchem, James M. Sheffer, Richard Brosnaham, Donald H. Partington, M. J. Menge, and Melisse K. Sellers have been furnished to Elliott Messer and Thomas M. Findley, of Messer, Caparello & Self, P.A., 215 S. Monroe Street, Suite 701, Tallahassee, FL. 32302, by U.S. Mail, this ____ day of _____, 2006.

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