

IN THE CIRCUIT COURT IN AND FOR ESCAMBIA COUNTY, FLORIDA

ALVIN'S STORES, et. al.,
Plaintiffs,

vs.

CASE NO. 04-2281-CA-01
DIVISION "A"

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

ORDER GRANTING SUMMARY JUDGMENT RELIEF

This cause is before the Court pursuant to notice upon cross-motions of the parties for summary judgment. The parties were present and heard through counsel and they have asserted to the Court that there is no genuine issue of disputed material fact so that this action may be resolved as a matter of law on the motions as presented. Having heard argument of counsel, having considered pleadings and affidavits of record as well as memoranda of law in support of and in opposition to said motions, this Court concludes plaintiffs' contentions contain purported factual distinctions without any legal difference and that Ward v. Brown, 919 So 2d 462 (1 DCA 2005) would control to bar the relief plaintiffs seek. In support of this determination, this Court enters the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. The property at Pensacola Beach, Escambia County, Florida, was conveyed to Escambia County by the United States of America by deed dated January 15, 1947, which deed granted to Escambia County the right to lease said property but otherwise not to dispose of or to convey it.

2. The following year, the Florida Legislature by special act created the Santa Rosa Island Authority (SRIA) and delegated to it the powers granted to Escambia County to develop and lease such property.

3. Since that time Escambia County through the SRIA has subleased parts of this property to private parties and entities including plaintiffs' businesses.

4. Plaintiffs are direct lessees, lessees by assignment or sub-lessees of properties on Pensacola Beach. The thirty-seven plaintiffs derive their leasehold interests through thirty-two leases issued by the SRIA.

5. The majority of plaintiffs' leases are for 99-year terms. Most of the 99-year leases have options to renew for further 99-year terms and eleven of the thirty-seven plaintiffs have options for further renewals of additional 99-year periods on like terms and conditions after the first renewal period. Some of the plaintiffs' leases have shorter terms and not all are identical in form. Escambia County construes these interests as specially classified "real property interests" which are "the equivalent of fee simple ownership." None of these leases is automatically renewable.

6. Plaintiffs use their leasehold estates and any improvements thereon predominantly for commercial purposes and rent is payable on the leases creating the leasehold estates.

7. All of plaintiffs' leases provide that title to any building or other improvements of a permanent character erected or placed on the premises shall vest in Escambia County.

8. None of these leases contains any clauses granting to plaintiffs an option to purchase ever the leased property or to acquire otherwise legal title to the leasehold improvements.

9. Plaintiffs have the right to use or rent the improvements, encumber their interests, transfer their property rights, and realize any appreciation in value from sale or rental income. They insure and maintain the improvements and are responsible for the payments of premiums and taxes. Plaintiffs also bear the full risk of loss on the improvements and are entitled to payment of insurance proceeds when claims are paid. All these benefits and burdens of ownership are expressed in the terms of the leases filed in this action and plaintiffs admit having such benefits and burdens of ownership. Parenthetically, this Court observes and surmises that should any of plaintiffs' leasehold interests become the subject of an eminent domain action, plaintiffs would in all likelihood assert entitlement to payment of compensation for loss or damages sustained as a result of such taking.

10. Neither the SRIA nor Escambia County does any maintenance or repair on the subject properties. The SRIA does not attempt to track the value of plaintiffs' improvements or any other realty on Pensacola Beach. The SRIA pays no insurance premiums on any of the properties in suit and it has not collected any proceeds from insurance claims on these properties. Even in those instances in which properties have been destroyed by hurricanes, the SRIA has not received insurance proceeds or filed any legal action to require rebuilding or to seek default under the lease agreements.

11. The SRIA does not advertise that such property is exempt from ad valorem taxation.

12. Plaintiffs, not the SRIA, receive the full benefit of any capital gains or appreciation in the value of their properties. Plaintiffs also depreciate the improvements on their federal income tax returns. In this case the useful lives of the plaintiffs' improvements are shorter than the terms of the land leases. Thus, the plaintiffs will enjoy the full value of the improvements over their useful lives prior to termination of the land leases.

13. While plaintiffs do pay lease fees, these fees do not support county services and are not deposited in the general fund of Escambia County. These lease fees are used for the administration of SRIA, maintenance of the beach and parks, payment of lifeguards and other emergency personnel and promotion of beach affairs.

14. Without the collection of real property ad valorem taxes from plaintiffs and other beach residents, plaintiffs would pay nothing to the general fund of Escambia

County and would derive a tax benefit not generally conferred to other residents of Escambia County.

15. For a period of sixteen years (1988 through 2003) the defendants did not appraise any of the improvements on Pensacola Beach as real property or seek to collect real property taxes on said improvements.

CONCLUSIONS OF LAW

1. This Court has jurisdiction over the subject matter of and the parties to this action.

2. This Court concludes plaintiffs are the equitable owners of the improvements to their real property and that the issues posited herein are governed by Ward v. Brown, 919 So 2d 462 (1 DCA 2005).

3. Because of the foregoing disposition this Court finds it unnecessary to address the constitutional issues raised by defendants.

4. The doctrine of *res judicata* and the holding in Bell v. Bryan, 505 So 2d 690 (1 DCA 1987), are not applicable to this action to warrant judgment as a matter of law in favor of plaintiffs.

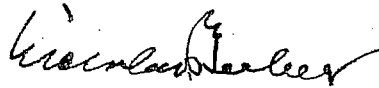
5. Defendants are entitled to judgment in their favor as a matter of law.

Accordingly, it is

ORDERED:

1. Plaintiffs' motion for summary judgment be and the same is hereby DENIED.
2. Defendants' motion for summary judgment be and the same is hereby GRANTED and counsel for defendants shall prepare an appropriate final judgment consistent with the foregoing pronouncements.

DONE AND ORDERED at Pensacola, Escambia County, Florida, this 17th day of November, 2006.



NICKOLAS P. GEEKER
CIRCUIT JUDGE

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