

IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT 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, and
JANET HOLLEY, Tax Collector
for Escambia County, Florida,

Defendants.

**ANSWER, AFFIRMATIVE DEFENSES, MOTION TO DISMISS, AND
MOTION TO STRIKE COMPLAINT**

The Defendants, CHRIS JONES, PROPERTY APPRAISER OF ESCAMBIA COUNTY and JANET HOLLEY, TAX COLLECTOR OF ESCAMBIA COUNTY, answer the Complaint and state:

1. Admitted that the Plaintiffs seek relief, as stated.
2. Admitted that the Plaintiffs purport to have leasehold interests in land; however, such Plaintiffs are the equitable owners of the improvements erected on the leased land.
3. Admitted that Escambia County has bare legal title to the land; however, the Plaintiffs are the equitable owners of the improvements erected on the land.
4. Each lease speaks for itself with respect to the term thereof and the requirement for the payment of rent. Without personal knowledge as to how each Plaintiffs' premises are used.
5. Admitted with the reservation that the courts have construed such statutes to provide that improvements equitably owned by persons on leaseholds of less than 100 years are

subject to ad valorem taxation at real property tax rates.

6. Denied that such decisions addressed the issue of equitable ownership, which is the test for the imposition of ad valorem taxation on real property.

7. Denied that this case is governed by *Bell v. Bryan*.

8. Admitted that the Property Appraiser has assessed the improvements equitably owned by the Plaintiffs as real property. Denied that such assessments violated any legal precedents or authorities. Admitted that such taxes shall be collected in accordance with the statutory provisions governing the collection of taxes.

9. Admitted only that the Plaintiffs seek such declaratory relief. Denied that such improvements were improperly or illegally assessed. Denied that the collection of ad valorem taxes on property equitably owned by the Plaintiffs would be illegal or improper.

10. Denied that estoppel applies to the issue of equitable ownership.

11. Admitted only that the Plaintiffs seek such relief. Denied that they are entitled to such relief.

12. Admitted that venue is proper.

13. Admitted that jurisdiction has been timely invoked under section 194.171, Florida Statutes, with respect to the named Plaintiffs.

Background

14. Without knowledge as to the authenticity of Exhibit 1. The attachment is illegible. Admitted only that the authentic deed in its entire context speaks for itself.

15. Admitted.

16. Admitted.

17. Without knowledge. Denied that such representations would have any relevance

to this litigation.

18. Admitted.

19. Admitted only that the holdings in the referenced cases speak for themselves.

Otherwise, denied.

20. Admitted only that the holdings in the referenced cases speak for themselves.

Otherwise, denied.

21. Admitted only that the referenced provisions speak for themselves. Otherwise, denied.

22. The Defendants do not have direct personal knowledge of the motivations behind the initiation of the referenced case. Denied that such case addressed the issue of equitable ownership, which is the test for the imposition of ad valorem taxation on real property.

23. Admitted only that the holding in the referenced case speaks for itself. Denied that such case addressed the issue of equitable ownership, which is the test for the imposition of ad valorem taxation on real property.

24. Admitted only that the holding in the referenced case speaks for itself. Denied that such case addressed the issue of equitable ownership, which is the test for the imposition of ad valorem taxation on real property.

25. The Defendants do not have direct personal knowledge of the motivations behind the initiation of the referenced case. Denied that such case addressed the issue of equitable ownership, which is the test for the imposition of ad valorem taxation on real property.

26. Admitted only that the holding in the referenced case speaks for itself. Denied that such case addressed the issue of equitable ownership, which is the test for the imposition of ad valorem taxation on real property.

27. Denied that such cases addressed the critical issue of equitable ownership, which is the test for the imposition of ad valorem taxation on real property.

28. Denied that such assessments were contrary to law. Admitted that such properties were assessed as real property because the Plaintiffs are the equitable owners of the improvements.

29. Admitted that such taxes were levied because the Plaintiffs are the equitable owners of the improvements.

30. Admitted only that the referenced provisions and decisions speak for themselves. Otherwise, denied.

Parties

31. Admitted.

32. Admitted.

33. Admitted that Schedule A lists putative Plaintiffs and Schedule B purports to list their properties.

34 and 35. Admitted only that Exhibits 3-8 are attached to the Complaint. Denied that these documents are sufficient to meet the requirements of Fla.R.Civ.P. 1.130. Further denied that these leases are necessarily representative of the all of the documents by which the Plaintiffs listed on Schedule A acquired their properties on Pensacola Beach.

COUNT I

36. The Defendants repeat each allegation made in the corresponding preceding paragraphs of this Answer.

37. Denied that Escambia County is the equitable owner of such improvements.

38. Denied that the improvements equitably owned by the Plaintiffs are intangible

property. Denied that the cited case is legal precedent, because it does not address the controlling issue of equitable ownership.

39. Denied that improvements equitably owned by the Plaintiffs are intangible property. Admitted that the State imposes taxes on intangible property.

40. Denied.

41. Denied.

42. Without knowledge as to the state of mind of the Plaintiffs.

43. Without knowledge.

COUNT II

44. The Defendants repeat each allegation made in the corresponding preceding paragraphs of this Answer.

45. Denied.

46. Denied that any such assessment or collection action with respect to property equitably owned by the Plaintiffs is illegal or contrary to law.

47. Denied.

COUNT III

48. The Defendants repeat each allegation made in the corresponding preceding paragraphs of this Answer.

49. Denied. The cited authority is not legal precedent, because it does not address the controlling issue of equitable ownership.

50. Denied.

51. Without personal knowledge of the precise relationships of the Bryan family.

52. Without personal knowledge.

53. Admitted that the case style indicates that Matt Langley Bell, III, was a party in both cases. The cited opinions do not make clear what the “party” status of Mr. John R. Jones was, other than as appellant in the case cited as 519 So.2d 1024. Mr. John R. Jones was not a party to the decision cited at 505 So.2d 690.

54. Denied that the cited cases are legal precedent, because they do not address the controlling issue of equitable ownership.

55. Denied.

56. Denied.

57. Denied that the cited cases are legal precedent, because they do not address the controlling issue of equitable ownership.

58. Denied.

59. Denied. However, admitted that the Property Appraiser issued TRIM notices reflecting assessments of improvements equitably owned by the Plaintiffs in 2004. Without knowledge of the Plaintiffs’ purported reliance on such decisions. Denied that the theory of estoppel is applicable to such assessments.

With respect to the prayers for relief expressed in the Complaint, the Defendants object to the granting of any relief, and seek a declaration that the real property improvements are owned by the Plaintiffs and subject to ad valorem taxation at real property rates. The Defendants further move for costs under Section 86.081, Florida Statutes.

MOTION TO DISMISS AND/OR STRIKE

The Defendants submit that the Complaint fails to satisfy Fla.R.Civ.P. 1.110, which requires that a Complaint contain only a “short and plain statement” of the ultimate facts upon which relief may be granted. The Complaint filed by the Plaintiffs contains legal argument in violation of this basic rule of pleading. In particular, the Plaintiffs argue in paragraphs 6-7, 22-28 and 30 that certain case law should apply to these facts.

At the outset, the Defendants note that none of the cases or authorities cited by the Plaintiffs addressed the issue of equitable ownership, which is the crucial issue in assessing ad valorem tax on real property after the Supreme Court of Florida decision in *Leon County Educational Facilities Authority v. Hartsfield*, 698 So.2d 526 (Fla. 1997)(in which the Supreme Court reversed the First District’s conclusion that legal title was the determining factor for ownership for ad valorem tax purposes). Notwithstanding the Plaintiffs’ misunderstanding of the state of the law, this legal debate is premature in the pleading stage. Such legal argument has no place in a pleading that is designed to be limited to a short and plain statement of the ultimate facts upon which relief may be granted. Consequently, the above-referenced paragraphs and Exhibit 2 (an order of summary judgment in a prior case) should be stricken, because they are not in compliance with Rule 1.110 of the Florida Rules of Civil Procedure.

The Complaint also contains an exhibit that should be stricken. Paragraph 34 of the Complaint refers to an attached Exhibit 3, which is an unsigned, blank copy of a form agreement. This document is not alleged to have been executed as part of any particular Plaintiff’s acquisition of assessed property. On its face, it is inconsistent with the other exhibits that provide for 99 year leaseholds with options to renew for additional 99-year periods. The form lease in Exhibit 3 has an option to renew for 30 years. There are other inconsistencies. In fact,

the Plaintiffs admit in Paragraph 34 that it is not the type of agreement utilized by the townhouse and condominium unit owners. Both by the admission of counsel and on its face, Exhibit 3 is not representative of the type of lease executed by all of the Plaintiffs in this case and should therefore be stricken.

Accordingly, the Complaint should be dismissed or such portions stricken.

AFFIRMATIVE DEFENSES.

FIRST AFFIRMATIVE DEFENSE

The Plaintiffs are the equitable owners of the real property improvements at issue, which are subject to local government ad valorem tax.

SECOND AFFIRMATIVE DEFENSE

Under Chapter 718, Florida Statutes, pertaining to condominium unit ownership, the Plaintiffs' condominium units are subject to real property ad valorem taxes as distinct units of ownership.

THIRD AFFIRMATIVE DEFENSE

The Plaintiffs have failed to allege and prove payments of all taxes which have been legally assessed upon the property by the same owner, and pursuant to Article VII, Section 13 of the Florida Constitution, this Court can grant no relief from the payment of alleged illegal or illegally assessed taxes until that payment has been made.

FOURTH AFFIRMATIVE DEFENSE

The property interests at issue constitute real property interests, and the improvements constructed thereon constitute real property as well. Plaintiffs rely upon the provisions of §196.199(2)(b), Fla. Stat. (2004) and §199.023, Fla. Stat. (2004) as the basis for their claim that their property may be assessed only as intangible personal property under Chapter 199, Florida

Statutes. If so interpreted, section 199.023 would impose a “state ad valorem tax” upon “real estate” in violation of Article VII, Section 1, of the Florida Constitution.

FIFTH AFFIRMATIVE DEFENSE

Plaintiffs rely upon the provisions of §196.199(2)(b), Fla. Stat. (2004) and §199.023, Fla. Stat. (2004) as the basis for their claim that their property may be assessed only as intangible personal property. If so interpreted, the operation of these statutes would not provide for taxation of the Plaintiffs’ properties at a “uniform rate” in violation of Article VII, Sections 2 and 4, of the Florida Constitution and result in the Plaintiffs receiving local governmental services while not paying their fair share of taxes.

SIXTH AFFIRMATIVE DEFENSE

Plaintiffs rely upon the provisions of §196.199(2)(b), Fla. Stat. (2004) as the basis for their claim that their property should be assessed only as intangible personal property. If so interpreted, the Legislature has acted beyond its constitutional authority under Article VII, Section 3, of the Florida Constitution. The Florida Constitution does not authorize such preferential tax treatment.

SEVENTH AFFIRMATIVE DEFENSE

The Plaintiffs allege that §196.199, Fla. Stat. (2004) creates a classification of their properties for ad valorem taxation purposes. Such a classification would violate Article VII, Section 4, of the Florida Constitution.

EIGHTH AFFIRMATIVE DEFENSE

The Plaintiffs allege that §196.199, Fla. Stat. (2004) creates a classification of their properties as intangible personal property. Such a classification 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.

NINTH AFFIRMATIVE DEFENSE

The Plaintiffs allege theories based on estoppel that are inapplicable to this case. Neither the Property Appraiser nor the Tax Collector may be estopped from imposing assessments based on prior actions. §197.122(1), Fla. Stat. (2004) (“No act of omission or commission on the part of any property appraiser, tax collector, board of county commissioners . . . shall operate to defeat the payment of taxes.”)

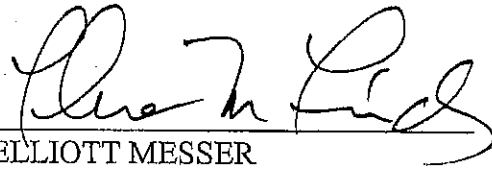
TENTH AFFIRMATIVE DEFENSE

The Plaintiffs allege theories based on res judicata and collateral estoppel that are inapplicable to this case. The Property Appraiser was not a party to prior litigation that resulted in the first decision of *Bell v. Bryan*. Moreover, the issues raised in the pleadings were not the same.

ELEVENTH AFFIRMATIVE DEFENSE

The Plaintiffs allege theories based on stare decisis. The cases cited by the Plaintiffs in this Complaint do not address equitable ownership or the other issues raised in these affirmative defenses. Therefore, such cases are not binding authority. Moreover, the decisions rendered in the cases cited by the Plaintiffs were void ab initio, as the Court lacked subject matter jurisdiction for such decisions.

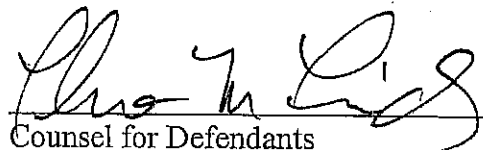
WHEREFORE, the Defendants respectfully request that this Court enter judgment for the Defendants, grant costs in their favor, and grant such other relief as it deems just and proper.



ELLIOTT MESSER
Fla. Bar No. 054461
THOMAS M. FINDLEY
Fla. Bar No.: 0797855
MESSER, CAPARELLO & SELF, P.A.
Post Office Box 1876
215 S. Monroe Street, Suite 701
Tallahassee, FL 32302-1876
(850) 222-0720
Counsel for Property Appraiser
and Tax Collector

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Answer was mailed to DANNY KEPNER and THOMAS GILLIAM, JR., Shell, Fleming, Davis & Menge, P.A., 226 South Palafox Street, 9th Floor, Pensacola, Florida 32502, this 10th day of January, 2005.



Counsel for Defendants