

IN THE CIRCUIT COURT OF THE
FIRST JUDICIAL CIRCUIT, IN AND
FOR ESCAMBIA COUNTY,
FLORIDA

1108 ARIOLA LLC, *et al.*
Plaintiffs

CASE NO.: 2004 CA 002290
DIVISION: J

CHRIS JONES, PROPERTY APPRAISER
OF ESCAMBIA COUNTY, and
JANET HOLLEY, TAX COLLECTOR
OF ESCAMBIA COUNTY.
Defendant

DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

Defendant Chris Jones, in his capacity as the Escambia County Property Appraiser (the "Property Appraiser"), and Defendant Janet Holley, in her capacity as the Escambia County Tax Collector (the "Tax Collector"), pursuant to Rule 1.510, Florida Rules of Civil Procedure, collectively move for Final Summary Judgment, and as grounds in support of such motion state:

1. The record in this case demonstrates that there is no genuine issue of material fact and the Property Appraiser and Tax Collector are entitled to summary final judgment as a matter of law.
2. As factual support for this motion, the Property Appraiser and Tax Collector will be submitting a Notice of Filing of discovery produced to date and

supporting affidavits. The Property Appraiser and Tax Collector will also be filing a Memorandum of Law, which will contain a Statement of Undisputed Facts, based on the contents of the Notice of Filing.

LEGAL GROUNDS FOR SUMMARY JUDGMENT.

A. The Plaintiffs are the equitable and legal owners of the improvements.

1. The Plaintiffs consist of over 3,000 individuals or legal entities with property interests on Pensacola Beach. The Plaintiff group consists of individuals and entities with single family residences and condominium units. The Plaintiffs contend, in their First Amended Complaint, that they are exempt from local government taxes, because they possess real property on long-term leaseholds (typically 99 years with further options to renew) from Escambia County.

2. Florida law provides that the equitable owner of real property is the party who is responsible for local government ad valorem real estate taxes. The Courts have concluded that the private users of realty on Santa Rosa Island (the barrier island stretching from Pensacola Beach in Escambia County to Navarre Beach in Santa Rosa County) are the equitable owners of such realty in this type of case.

3. To date, the First District Court of Appeal has concluded on two occasions that individuals and entities with similar real property interests on Santa Rosa Island, in both Escambia and Santa Rosa Counties, are the equitable owners of

their properties for local government ad valorem tax purposes. *Ward v. Brown*, 919 So. 2d 462 (Fla. 1st DCA 2005); *Alvin's Stores v. Jones*, No. 07-0149 (Fla. 1st DCA Oct. 22, 2007)(per curiam affirmance of the Property Appraiser's position on the precise issues involved in this case).¹ See Tabs A and B.

4. Moreover, this Circuit Court has now held on at least four occasions that the individuals and businesses on Santa Rosa Island are the equitable owners of their real property. See *Ward v. Brown* trial court order; *Alvin's Stores v. Jones* trial court order; *AMFI v. Jones* trial court order; and *Portofino v. Jones* trial court order. See Tabs C through F. In addition, three other groups of plaintiffs (including two groups represented by plaintiffs' counsel in this case) have stipulated to judgments. One group consisted of the entire class of plaintiffs with real property interests in Santa Rosa County. See Stipulated Judgments attached at Tabs G through I. Thus, there are a total of two appellate decisions and seven judgments entered by this Court, which are contrary to plaintiffs' position in this case.

5. In *Ward v. Brown*, the First District Court of Appeal concluded that similarly situated plaintiffs in Santa Rosa County bore virtually all of the relevant burdens and benefits of ownership. Consequently, those plaintiffs were deemed to

¹ The defense agrees that the "per curiam affirmed" opinion would have no precedential value in the appellate courts, but cites the decision as part of the historical context of the instant case.

be the equitable owners of the improvements. The First District held: "Because we agree with the trial court [in this judicial circuit] that appellants have sufficient rights and duties regarding the property to make them equitable owners, we affirm." *Ward v. Brown*, 919 So.2d at 463 (citing *Serv. Metro Corp. v. Bell*, 786 So.2d 1216 (Fla. 1st DCA 2001) and *Leon County Educ. Facilities Auth. v. Hartsfield*, 698 So.2d 526 (Fla. 1997)).

6. In *Ward v. Brown*, the First District distilled the analysis to seven important factors for equitable ownership, as follows:

Appellants 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 must insure and maintain the improvements and are responsible for the payment of any taxes. Therefore, appellants are the equitable owners of the property.

Id. at 463. All of these factors are also present in this case. Therefore, the Plaintiffs are the equitable owners of such units under Florida law for ad valorem tax purposes.

7. The *Ward v. Brown* Court further held, as additional support for its ruling, that any leasehold with an initial term of over 98 years was considered to be the equivalent of ownership under the Florida Constitution. The First District held: "[T]he Florida Constitution expressly contemplates equitable ownership for leases

with **initial** terms of 99 years by providing homestead exemptions for leaseholds in excess of 98 years.” *Id.* at 464 (citing Art. VII, §6(a), Fla. Const.). Based on the foregoing, *Ward v. Brown* is dispositive of the issues presented in the instant case.

8. This Court has also confirmed that leaseholders on Pensacola Beach are the equitable owners of the subject properties, even when they have lease terms less than 98 years. In *Alvin’s Stores v. Jones*, Case No. Case No. 04-2281-CA-01, the Honorable Nickolas Geeker entered an Order Granting Summary Judgment Relief, on November 17, 2006, relying on *Ward v. Brown* in the context of leases on Pensacola Beach. In *Alvin’s Stores*, some of the underlying land leases contained no renewal rights and some were of much shorter duration than the lease terms involved in the instant case. Nevertheless, this Court held that all of the *Alvin’s Stores* plaintiffs were the equitable owners of the improvements involved in that case. This order was affirmed by the First District Court of Appeal. See Tab B.

9. In this case, it is undisputed that the Plaintiffs occupy the improvements and use them for private purposes, either as private residences or as rental property. The Plaintiffs bear the entire responsibility for repairs, maintenance and insurance of the improvements. Those Plaintiffs who rent their units take depreciation deductions on their federal income tax returns.

10. In contrast, the County has none of the benefits or burdens of ownership. Consequently, the Plaintiffs are the equitable and beneficial owners of the improvements.

11. In addition, the legal rights of the subgroup of Plaintiff condominium unit owners in this case have interests that are well-defined by Chapter 718, Florida Statutes, and publicly filed declarations of condominium. These condominium unit owners are the legal owners of real property, according to Chapter 718, Florida Statutes, which defines a condominium parcel to be a separate parcel of "real property," even when the condominium is created on a leasehold. Thus, these condominium units held by this subgroup of Plaintiffs are subject to taxation as real property.

B. The Plaintiffs' interpretation of the statutes yields an unconstitutional result.

1. There is no substantive difference between the benefits and burdens that the Plaintiffs have with respect to their improvements and condominium units and the rights that similarly situated mainlanders have in Escambia County.

2. Florida Courts have conclusively determined, on multiple occasions, that any attempt to exempt the owners of the Pensacola Beach properties would undoubtedly be discriminatory and violative of the equal protection provisions of the Florida and United States Constitutions. *See Williams v. Jones*, 326 So. 2d 425, 432

(Fla. 1975) (“Basically, the appellants [on Pensacola Beach] contend for a constitutional exemption from ad valorem real estate taxation where none exists and, if it did, such an exemption would undoubtedly be discriminatory and violative of the equal protection provisions of the Florida and United States Constitutions”); *Archer v. Marshall*, 355 So. 2d 781 (Fla. 1978); *AMFI Investment Corp v. Kinney*, 360 So. 2d 415 (Fla. 1978). The *Williams v. Jones* case dealt with a broad group of Pensacola Beach plaintiffs, including at least one with only a 25-year lease.

2. If the Plaintiffs’ argument in this case were accepted, section 196.199 would also violate the Florida constitutional provisions requiring that property be assessed at just value at “uniform rates.” Art. VII, § 2, 4, Fla.Const.

3. Moreover, any construction of the statutes to impose the intangibles tax of Chapter 199, Florida Statutes, on such real property interests on Pensacola Beach would impose a statewide tax on real property in violation of Art. VII, §1, Fla.Const.

4. There is no authority in the Florida Constitution for an exemption of this nature for private leaseholders of governmental property. Therefore, such an exemption would also violate Art. VII, §3, Florida Constitution.

5. In addition to the Florida Supreme Court’s multiple holdings that these private interests must be taxed at parity with other property owners in Escambia County, this Court recently held the same. In *AMFI v. Jones*, the Honorable Jan

Shackleford ruled, on December 13, 2007: "The Florida Constitution requires that the Plaintiffs pay ad valorem taxes at local government rates at parity with other citizens of Escambia County." See Tab E.

Conclusion

The pleadings and factual record in this case show conclusively that there is no issue as to any material fact, and that the Property Appraiser and Tax Collector are entitled to summary judgment as a matter of law. The Property Appraiser and Tax Collector will be filing a "Notice of Filing in Support of the Property Appraiser's Motion for Summary Judgment" and a Memorandum of Law in support of this motion, which we would expect to be heard on hearings for cross motions for summary judgment.

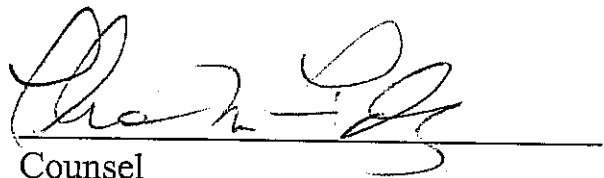
WHEREFORE, the Defendants Chris Jones and Janet Holley respectfully request entry of summary final judgment in their favor



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to: Danny L. Kepner, Esq. and Thomas J. Gilliam, Jr., Esq., Shell, Fleming, Davis & Menge, P.A., 226 South Palafox Street, 9th Floor, Pensacola, FL 32502 this 21 day of February, 2008.


Counsel

A

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

LEWIS Y. AND BETTY T.
WARD, ROBERT H. AND LINDA
K. COLEY, HOMER EDWARD
WEIDLICH, JR., and MATTHEW
AND ANGELA GARDNER,

NOT FINAL UNTIL TIME EXPIRES TO
FILE MOTION FOR REHEARING AND
DISPOSITION THEREOF IF FILED

CASE NO. 1D04-1629

Appellants,

v.

GREGORY S. BROWN,
PROPERTY APPRAISER FOR
SANTA ROSA COUNTY, and
ROBERT G. McCLURE, TAX
COLLECTOR FOR SANTA ROSA
COUNTY,

Appellees.

Opinion filed June 17, 2005.

An appeal from the Circuit Court for Santa Rosa County.
Honorable Paul A. Rasmussen, Judge.

Donald H. Partington and William H. Stafford, III of Clark, Partington, Hart,
Larry, Bond & Stackhouse, Pensacola; Joseph C. Mellichamp, III of Carlton
Fields, P.A., Tallahassee; Benjamin K. Phipps of The Phipps Firm, Tallahassee,
for Appellants.

Elliott Messer and Thomas M. Findley of Messer, Caparello & Self, P. A.; Roy V.
Andrews of Lindsay, Andrews & Leonard, P. A., Milton, for Appellees.

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POLSTON, J.

Appellants challenge the trial court's ruling that they are equitable owners of the property improvements placed on their leaseholds at Navarre Beach in Santa Rosa County. They contend that their leasehold interests are exempt from ad valorem property taxes pursuant to section 196.199, Florida Statutes (2001). Because we agree with the trial court that appellants have sufficient rights and duties regarding the property to make them equitable owners, we affirm. See Serv. Metro Corp. v. Bell, 786 So. 2d 1216, 1217 (Fla. 1st DCA 2001); Leon County Educ. Facilities Auth. v. Hartsfield, 698 So. 2d 526, 529 (Fla. 1997) (stating that "equitable ownership should be applied evenhandedly regardless of whether a tax is being imposed or an exemption is being claimed").

The land underlying appellants' improvements was conveyed by the United States of America to Escambia County in 1947. Escambia County later leased this land to Santa Rosa County for 99 years with automatic renewals for additional 99-year periods in perpetuity. It is undisputed that appellants have the right to renew their own assigned interests in this land lease for the same term of Santa Rosa County's lease term from Escambia County, thereby providing appellants with the same right to perpetual renewals. Appellants 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 must insure and maintain the improvements¹ and are responsible for the payment of any taxes. Therefore, appellants are equitable owners of the property. See Thompson v. First Nat'l Bank of Hollywood, 321 So. 2d 466, 468 (Fla. 4th DCA 1975) (defining a lease in perpetuity as one that is renewable forever at the lessee's option and as "a grant of lands in fee with the reservation of a rent in fee"; describing a perpetual lease as a conveyance in fee, reserving rent); J.W. Perry Co. v. City of Norfolk, 220 U.S. 472, 479 (1911) (ruling that a lease for a term of 99 years with a right to renew for additional terms of 99 years in perpetuity is a perpetual lease and the "tenant is in effect the virtual owner of the property, and entitled to its use forever;" therefore, "[f]or the purposes of taxation, the mere legal title remaining in the landlord will be disregarded"); Wells v. City of Savannah, 181 U.S. 531, 544 (1901) (ruling that ad valorem property taxes were properly assessed against property subject to perpetual leases because the lessees' "right was in substance that of ownership" and "bears no resemblance to the case of an ordinary lease for years between landlord and tenant"); Wright Runstad Props. Ltd. P'ship v. United States, 40 Fed. Cl. 820, 825 (1998)

¹Appellants argue that they are not equitable owners because they are required to maintain and rebuild the improvements, and the improvements are required to be conveyed to Santa Rosa County at the termination of the lease. We are not persuaded because there is no end to the lease. See Archer v. Marshall, 355 So. 2d 781, 784 (Fla. 1978).

(stating that a lessee is the sole beneficiary of a leasehold improvement when "the lease term is perpetual or will outlast the useful life of the capital improvement for which the special assessment is levied"); Penick v. Atkinson, 77 S.E. 1055, 1057 (Ga. 1913) (ruling that a perpetual lease, with power to re-enter for nonpayment of rent, is the equivalent of a fee reserving rent, and the property should be taxed to the lessee as owner).²

We are not persuaded by appellants' argument that section 196.199(7) (stating *inter alia* that property which is originally leased for 100 years or more, exclusive of renewal options, shall be deemed to be owned) provides a safe harbor from being taxed as equitable owners. This provision only provides a bright-line test for leases having an initial term of 100 years or more, by deeming them as owned without the need to further address whether there are sufficient rights and duties to consider the lessees as equitable owners. A plain reading of the section indicates that it does not address 99-year term leases, with automatic renewals for additional 99-year periods in perpetuity, or any other circumstances from which equitable ownership may be found. See Parker v. Hertz Corp., 544 So. 2d 249, 251 (Fla. 2d DCA 1989) (rejecting Hertz's argument that because it had a lease less than 100 years, it cannot be deemed

²We agree with appellees that Bell v. Bryan, 505 So. 2d 690 (Fla. 1st DCA 1987), is not controlling because the issue of equitable ownership was not addressed.

an owner for property tax purposes; "we do not perceive the sweep of the word 'owned' appearing in section 196.199(2)(b) to be measurable exclusively by section 196.199(7)"; "[t]here is nothing within section 196.199(7) barring the examination of extrinsic criteria in deciding a question of ownership"); Hiialeah, Inc. v. Dade County, 490 So. 2d 998, 999-1001 (Fla. 3d DCA 1986) (rejecting Hiialeah Inc.'s argument that because it had a 30-year lease from the City of Hiialeah, which is less than 100 years under section 196.199(7), it should be considered as a leasehold subject to intangible personal property taxation, and holding that Hiialeah Inc. was the beneficial owner of the property subject to assessment of real property taxes). Moreover, the Florida Constitution expressly contemplates equitable ownership for leases with initial terms of 99 years by providing homestead exemptions for leaseholds in excess of 98 years. See art. VII, § 6(a), Fla. Const. Accordingly, we agree with the trial court that the appellants are equitable owners and their property is not exempt from taxation.

AFFIRMED.

WEBSTER, J. CONCURS; BENTON, J. DISSENTS WITH OPINION.

BENTON, J., dissenting.

The Property Appraiser and Tax Collector argue that improvements to county-owned real property are subject to local ad valorem taxes because, they claim, the real property improvements—in contrast to the ground³ on which they stand—are “owned by the [sub]lessee[s].” § 196.199(2)(b), Fla. Stat. (2004). We rejected exactly the same “novel proposition” in Bell v. Bryan, 505 So. 2d 690, 691-92 (Fla. 1st DCA 1987), and should do so again, as a matter of stare decisis.

In the absence of intervening legislation, the county officials’ abrupt change in position raises the fundamental question whether local government must “be authorized by law to levy,” Art. VII, § 9(a), Fla. Const., or whether the Property Appraiser and Tax Collector may themselves simply decide to levy, ad valorem taxes on buildings, fixtures and other improvements to land that is itself concededly immune or exempt from local ad valorem taxation.

In my view, moreover, even if we were free to ignore a quarter century’s practice, the real property improvements, like the land, are the property of the sovereign, are subject to the same leases the land is, and are no more amenable to local ad valorem taxes than the land itself. Accordingly, I respectfully dissent.

³The parties do not dispute that the “leasehold or other interest” the taxpayers have in county-owned land “shall be taxed only as intangible personal property pursuant to chapter 199” because “rental payments are due in consideration of such leasehold or other interest.” § 196.199(2)(b), Fla. Stat. (2004).

I.

The leases involved encumber property that belonged to the federal government until January 15, 1947, when the United States of America conveyed land to Escambia County by a deed containing this proviso:

PROVIDED, that the above described land shall be retained by the said Escambia County and used by it for such purposes as it shall deem to be in the public interest or be leased by it from time to time in whole or in part or parts to such persons and for such purposes as it shall deem to be in the public interest and upon such terms and conditions as it shall fix and always be subject to regulation by said county whether leased or not leased but never to be otherwise disposed of or conveyed by it.

(Emphasis supplied.) Subject to this deed restriction, Escambia County leased part of the property to Santa Rosa County. The learned trial judge made the following findings of fact:

1. On or about February 11, 1956, Santa Rosa Island Authority, an agency of Escambia County, Florida, entered into an agreement to lease the Navarre Beach section of Santa Rosa Island to Santa Rosa County (hereafter referred to as the "Prime Lease") for a term of 99 years with a 99 year renewal option.

2. Paragraph 2 of the Prime Lease provides in pertinent part:

Lessee [Santa Rosa County] or its said agency may grant leases with respect to all or any part of the demised property for residential, recreational, and commercial purposes, provided the leases shall be substantially upon the same terms, considerations,

conditions as like leases then in use by the lessor [Santa Rosa Island Authority].

3. At the time the Prime Lease was executed, all leases in use by the Santa Rosa Island Authority provided that title to any improvements to the leased property would vest forthwith in Escambia County.

4. Plaintiffs are residential lessees, assignees, or sub-lessees from Santa Rosa County, Florida. The Plaintiffs Lewis and Betty Ward and Robert and Linda Coley have condominium units located on their leaseholds in Navarre Beach. Homer Weidlich has a condominium unit and a townhome located on his leaseholds in Navarre Beach. Mathew and Angela Gardner have a single family residence located on their leasehold in Navarre Beach. The Wards, Coleys, and Weidlich rent their units to third parties while the Gardner's residence is owner occupied.

5. The term of the Plaintiff's leases is for a period of 99 years with an option to renew for 99 years. If the Plaintiffs observe and perform all conditions of the lease, they shall hold and enjoy the premises for the lease term.

6. The Plaintiff's lease agreements with Santa Rosa County require the payment of ground rent throughout the term of the lease.

7. The leases or sub-leases between Santa Rosa County and Plaintiffs contain a section regarding improvements that substantially contains the following language: (1) "Title to any building or other improvements of a permanent character that shall be placed upon the leased property by lessee shall vest in lessor, or its assigns, upon the termination of this lease, and lessee acknowledges that it shall not have the right to remove such fixed and permanent improvements from its leased property," or (2) "Title to any buildings or other improvements of a permanent character that shall be erected or placed upon

the leased property by the Lessee shall upon termination of this Lease vest in said Santa Rosa County subject, however, to each and every provision of this Lease. Lessee acknowledges that it shall have no right to remove such fixed permanent improvements from leased property.”

8. The Plaintiffs are permitted to convey, assign, transfer, or mortgage their leasehold estates without prior written approval of Lessor.

9. The Plaintiffs' lease agreements also include the following provisions: the Plaintiffs as lessees or sub-lessees may use the premises as provided in the lease; the Plaintiffs must maintain the property in a clean, attractive and safe condition; the Plaintiffs must at their own cost and expense, repair and replace and maintain the leased property in a good, safe and substantial condition and shall use all economically reasonable precautions to prevent waste, damage or injury to the leased property; the Plaintiffs must provide for insurance; the Plaintiffs agree that the leased premises are subject to the terms, covenants, conditions, and restrictions of the Prime Lease; in the event of destruction of any building or improvements by fire, windstorm, water or other cause, Plaintiffs must repair or rebuild such building or improvement or be in breach of the lease agreement; all insurance proceeds from the destruction of the premises are payable to the Lessor and the Lessee jointly to assure repair or replacement of the improvements; and Plaintiffs must pay all taxes imposed upon the leased property.

10. During and after the term of the lease, the lease agreements do not provide an opportunity for the Plaintiffs to acquire any interest in the improvements through an option to purchase or otherwise. In addition, the lease agreements do not contain a provision providing compensation to the Plaintiffs as a result of the early termination of the lease. Further, the Plaintiffs must

surrender possession of the leasehold at the end of the lease term without compensation.

11. In tax year 2001, the property appraiser placed the improvements located on the Plaintiffs' leasehold properties on the tax rolls and imposed real property ad valorem taxes on those improvements.

(Record citations omitted; brackets in original.) The ground rent is in addition to the full value of the improvements which, upon termination of the leases, become the unencumbered property of the county.

II.

Our supreme court considered the tax implications of leases like these even before the statutes that now govern were on the books. See Williams v. Jones, 326 So. 2d 425, 429 (Fla. 1975) ("This is the third occasion in which the taxable status of leaseholds on Santa Rosa Island has been before this Court."). Examining particularly article VII, section 2 of the Florida Constitution and section 196.199(6), Florida Statutes (1975), the supreme court said in the Williams case:

The questions presented by the instant appeal essentially are: Does the Legislature have the power constitutionally to treat leasehold interests in public land such as are here involved as real property for ad valorem tax purposes and, secondly, has the Legislature done so through the enactment of the [now superseded] statutory provisions here under attack? We answer both propositions in the affirmative.

326 So. 2d at 429. In deciding that the statutes then in effect subjected to ad valorem taxation as real property the "leasehold interests in public land" created by Santa Rosa Island Authority leases, the Williams court construed this provision:

Property which is originally leased for 99 years or more, exclusive of renewal options, shall be deemed to be "owned" for purposes of this section.

§ 196.199(6), Fla. Stat. (1975). Until this language was enacted (i.e., "[p]rior to the enactment of Chapter 71-133, Laws of Florida," Williams, 326 So. 2d at 437, which was originally codified as section 196.199(6), and is now codified as section 196.199(7)), the lessees' interests had not been taxed. See generally State v. Escambia County, 52 So. 2d 125, 130 (Fla. 1951). Acknowledging the possibility that "a charge in lieu of taxes was taken into consideration in establishing the [amount of the] rent" while the original exemption remained in force, the Williams court opined "that if such is the case such lessees may very well be entitled, in a proper forum, to seek an equitable adjustment of their rental payments" under the leases. 326 So. 2d at 436-37.

"In response to this problem, the Legislature passed Special Act 76-361 ... the primary effect of [which was] to require that rentals due the Santa Rosa Island Authority on leases dated on or before December 1, 1975, will be reduced each year by the amount of ad valorem taxes for county and school purposes paid on the leasehold interests for the preceding year." Archer v. Marshall, 355 So. 2d 781, 782-83 (Fla. 1978). When the question of Special Act 76-361's constitutionality reached

our supreme court, however, the court “[h]eld that Chapter 76-361 . . . violates Article VII, Section 3, Florida Constitution (1968), and is invalid.” Id. at 785. See also Am Fi Inv. Corp. v. Kinney, 360 So. 2d 415; 415 (Fla. 1978) (invalidating two “similar special act[s]” because they also were intended to “provide for an indirect exemption from ad valorem taxes not authorized by our state constitution and provide for refund to leaseholders of ad valorem taxes lawfully paid during 1972, 1973, and 1974”). In short, the Legislature was stymied in its efforts “to seek an equitable adjustment of [the lessees’ full] rental payments,” Williams, 326 So. 2d at 436-37, by reducing or refunding the rental payments.

III.

Having failed—once the supreme court struck down the special acts reducing or refunding lease payments—to mitigate the perceived inequity of requiring full rental payments on top of ad valorem taxes, the Legislature changed tacks and exempted the lessees’ interests from real property ad valorem taxation altogether, restoring the status quo before chapter 71-133 became law. In order to accomplish this, chapter 80-368, § 2, at 1500, Laws of Florida, was enacted, amending section 196.199(7) to read:

Property which is originally leased for 100 years or more, exclusive of renewal options, or property financed, acquired, or maintained utilizing in whole or in part funds acquired through issuance of bonds pursuant to Chapter 159, parts II, III and V, shall be deemed to be “owned” for purposes of this section.

(Emphasis supplied.) See also § 196.199(7), Fla. Stat. (2004). Although this was an indirect means to its end, the Legislature followed the path marked by the Williams decision, simply replacing 99 with 100. See Williams, 326 So. 2d at 436 (“Leases for an initial term of less than 99 years are to be valued based on the economic value thereof taking into consideration, among other things, the duration of the unexpired term of the lease, while in the case of leases for an initial term of 99 years or more the lessee may be considered to be the owner ‘in fee simple’ and the property subject to the lease shall be valued for tax purposes as all other property owned in fee simple.”).

As for appellants’ leaseholds—all for an initial term of less than 100 years—the same enactment simultaneously removed any obstacle to taxation as intangible personalty. See Ch. 80-368, § 4, at 1501, Laws of Fla. (subjecting leaseholds in public lands to intangible tax where “rental payments are due in consideration of such leasehold estate or possessory interest”). See generally Miller v. Higgs, 468 So. 2d 371, 377 (Fla. 1st DCA 1985) (rejecting a “smorgasbord of constitutional challenges [to chapter 80-368] asserted under Article VII”), disapproved in part by Capital City Country Club, Inc. v. Tucker, 613 So. 2d 448, 450 (Fla. 1993) (emphasizing that, in the Capital City Country Club case, “a municipality . . . owns the property rather than some other governmental entity”). Consistently since the failed challenge to the statutory change effected by chapter 80-368, the Santa Rosa Island Authority leases or subleases have been taxed as “chattels real,” a form of intangible personal

property, while the county-owned land that is the subject of the leases has been treated as property of the sovereign, immune from taxation.

IV.

The same law that removed any obstacle to taxing the (sub)lessee's leasehold as tangible personal property, where the lessor was a governmental entity like the Santa Rosa Island Authority, and made clear that land owned by county government was immune from taxation, also provided

that nothing herein shall be deemed to exempt personal property, buildings, or other real property improvements owned by the lessee from ad valorem taxation.

Ch. 80-368, § 2, at 1500, Laws of Fla., now codified as section 196.199(2)(b), Florida Statutes (2004). Based on this provision, the Property Appraiser has assessed and the Tax Collector proposes to collect taxes on real property improvements to land the Santa Rosa Island Authority has leased to the appellants.

Precisely the same approach in 1982 and 1983 led to litigation in Escambia County that reached this court. See Bell v. Bryan, 505 So. 2d 690 (Fla. 1st DCA 1987). In deciding that case in favor of the lessees, we first summarized the situation:

With regard to the taxes to be paid by appellees in 1982 and 1983, the County assessed no tax on the value of the leasehold without improvements. This was apparently taxed by the state as intangible personal property pursuant to Section 196.199(2)(b), Florida Statutes (1981). However, taxes on the improvements made by the lessees/appellees were assessed at the full real property

rate. Appellant/Tax Collector issued tax certificates on the property to enforce the assessments. Appellees filed a complaint requesting declaratory and injunctive relief. The trial court granted summary judgment in favor of appellees finding that the real property belonged to the County, thus making tax certificates an improper method of enforcing an assessment, and finding that the assessments should have been at the intangible property rate instead of the real property rate. We affirm on both grounds.

Id., at 690-91. We explained our holding by reference to the governing statutes:

The general method of taxation is prescribed in other parts of Florida Statutes, e.g. Chapters 193 and 200. However, within Chapter 196, entitled "Exemptions," appears Section 196.199(2)(b), Florida Statutes (1981) [FN3]:

FN3. The statute was slightly changed in 1985. Chapter 85-342, Laws of Florida.

(2) Property owned by the following governmental units, but used by nongovernmental lessees, shall only be exempt from taxation under the following conditions:

.....

(b) . . . Such leasehold estate shall be taxed only as intangible personal property pursuant to Chapter 199 if rental payments are due in consideration of such leasehold estate. If no rental payments are due pursuant to an agreement creating such leasehold estate, the leasehold shall be taxed as real property. Nothing in this section shall be deemed to exempt personal property, buildings, or other real property improvements owned by the lessee from ad valorem taxation.

The exemption contained in this section is applicable to the instant leaseholds. All parties concede that the exemption applies to the real property on which the improvements were built. However, appellants argue the novel proposition that the improvements, which are property of Escambia County, and the development of which is the express purpose of the creation of the leasehold, are not part of that leasehold. We can find no basis in law or reason for determining that the improvements on the real property are not as much a part of the leasehold as the real property itself.

The trial court correctly determined that the assessments placed on the improvements to the subject property were erroneous and should have been determined at the intangible personal property rate pursuant to the above quoted section.

Id. at 691-92. In the present case, Santa Rosa County's Property Appraiser and Tax Collector again argue the (now less) "novel proposition that the improvements, which are property of Escambia County, and the development of which is the express purpose of the creation of the leasehold, are not part of that leasehold." Id. at 691.

V.

Since we do not sit en banc, we are bound by stare decisis to follow the decision in Bell v. Bryan. The majority opinion contends that Bell v. Bryan "is not controlling because the issue of equitable ownership was not addressed." Ante p. 4 n.2. But nothing else could have been addressed in Bell v. Bryan. Legal title has never been in question. The issue in Bell v. Bryan, like the issue here, was neither more nor less than whether the lessees owned real property improvements for ad

valorem tax purposes. Those lessees did not have deeds to the real property improvements, just as these lessees do not.

The majority opinion argues, in essence, that the duration of the leases is such that, as a practical matter, the lessee can be deemed the owner of the fee interest. But this argument overlooks the significance of chapter 80-368, § 2, at 1500, Laws of Florida. Revealingly, the argument also proves too much. It applies with equal force to the improvements and to the land itself, and must be rejected for that reason. The original deed restriction—and perhaps the Supremacy Clause—as well as Florida law over the last twenty-five years make unmistakably clear that the land, owned after all by the sovereign, is not to be taxed.

The other group of cases the majority opinion cites involves situations where lessees are deemed beneficial or equitable owners⁴ of property to which government temporarily holds title as part of some financing arrangement. In these cases, once the financing is complete, the lease terminates and the property or its value devolves

⁴In stark contrast, to reiterate, the trial judge found in the present case that the taxpayers acquired no interest in the improvements:

During and after the term of the lease, the lease agreements do not provide an opportunity for the Plaintiffs to acquire any interest in the improvements through an option to purchase or otherwise. In addition, the lease agreements do not contain a provision providing compensation to the Plaintiffs as a result of the early termination of the lease. Further, the Plaintiffs must surrender possession of the leasehold at the end of the lease term without compensation.

on the beneficial owner automatically or upon payment of a nominal sum. The leases in the present case afford no option to purchase, and no possibility for the lessee to obtain the value of the improvements he is bound to surrender to the lessor upon termination of the lease.

In sum, like the Bell v. Bryan court, I “can find no basis in law or reason for determining that the improvements on the real property are not as much a part of the leasehold as the real property itself.” Bell v. Bryan, 505 So. 2d at 691-92.

B

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

ALVIN'S STORES, INC., ET AL.,

Appellants,

NOT FINAL UNTIL TIME EXPIRES TO
FILE MOTION FOR REHEARING AND
DISPOSITION THEREOF IF FILED

v.

CASE NO. 1D07-0149

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

Appellees.

Opinion filed October 22, 2007.

An appeal from the Circuit Court for Escambia County.
Nickolas P. Geeker, Judge.

Danny L. Kepner and Thomas J. Gilliam, Jr. of Shell, Fleming, Davis & Menge, P.A.,
Pensacola, for Appellants.

Elliott Messer and Thomas M. Findley of Messer, Caparello & Shelf, P.A.,
Tallahassee, for Appellees.

PER CURIAM.

AFFIRMED.

DAVIS, LEWIS and ROBERTS, JJ., CONCUR.

C

IN THE CIRCUIT COURT IN AND FOR
SANTA ROSA COUNTY, FLORIDA

LEWIS Y. and BETTY T. WARD,
ROBERT H. COLEY and LINDA
K. COLEY, HOMER EDWARD
WEIDLICH, JR. and MATHEW
and ANGELA GARDNER,

Plaintiffs,

v.

GREGORY S. BROWN,
Property Appraiser of Santa
Rosa County, Florida, and
ROBERT G. McCLURE,
Tax Collector for Santa Rosa
County, Florida,

Defendants.

/ Case No.: 01-892-CA01-DJ.

**ORDER GRANTING DEFENDANTS' AMENDED MOTION FOR
SUMMARY JUDGMENT AND ENTRY OF FINAL SUMMARY JUDGMENT**

THIS MATTER is before the Court upon Plaintiffs' Motion for Partial Summary Judgment, Plaintiffs' Motion for Final Summary Judgment, and Defendants' Amended Motion for Summary Judgment. In the underlying complaint, the Plaintiffs are seeking declaratory and injunctive relief through a determination that their leasehold interests on Navarre Beach are exempt from ad valorem property taxes in tax year 2001 pursuant to section 196.199, Florida Statutes.

Both parties assert that there are no genuine issues as to any material fact and that the cause of action may be resolved as a matter of law. Having heard arguments of counsel, the memoranda filed in support of the motions, the case record, and being otherwise fully advised in the premises, the Court finds as follows:

Findings of Fact

1. On or about February 11, 1956, Santa Rosa Island Authority, an agency of Escambia County, Florida, entered into an agreement to lease the Navarre Beach section of Santa Rosa Island to Santa Rosa County (hereafter referred to as the "Prime Lease.") for a term of 99 years with a 99 year renewal option.

2. Paragraph 2 of the Prime Lease provides in pertinent part:

Lessee [Santa Rosa County] or its said agency may grant leases with respect to all or any part of the demised property for residential, recreational, and commercial purposes, provided the leases shall be substantially upon the same terms, considerations, conditions as like leases then in use by the lessor [Santa Rosa Island Authority].

(Exhibit 2, Exhibits to Memorandum in Support of Plaintiffs Motion for Summary Judgment and in Opposition to Defendant's Motion for Summary Judgment filed on March 3, 2003 (hereafter "Exhibits in Support of Plaintiffs' Motion for Summary Judgment"))

3. At the time the Prime Lease was executed, all leases in use by the Santa Rosa Island Authority provided that title to any improvements to the leased property would vest forthwith in Escambia County. (Exhibit 3, Exhibits in Support of Plaintiffs' Motion for Summary Judgment).

4. Plaintiffs are residential lessees, assignees, or sub-lessees from Santa Rosa County, Florida. The Plaintiffs Lewis and Betty Ward and Robert and Linda Coley have condominium units located on their leaseholds in Navarre Beach. Homer Weidlich has a condominium unit and a townhome located on his leaseholds in Navarre Beach. Mathew and Angela Gardner have a single family residence located on their leasehold in Navarre Beach. The Wards, Coleys, and Weidlich rent their units to third parties while the

Gardner's residence is owner occupied. (Exhibits A, B, C, and D, Defendant's First Notice of Filing in Support of Property Appraiser Brown's Motion for Summary Judgment filed on February 11, 2003 (hereafter "Defendant's First Notice of Filing")).

5. The term of the Plaintiffs' leases is for a period of 99 years with an option to renew for 99 years. If the Plaintiffs observe and perform all conditions of the lease, they shall hold and enjoy the premises for the lease term. (Exhibits A, B, C, and D, Defendant's First Notice of Filing).
6. The Plaintiffs' lease agreements with Santa Rosa County require the payment of ground rent throughout the term of the lease. (Exhibits A, B, C, and D, Defendant's First Notice of Filing).
7. The leases or sub-leases between Santa Rosa County and Plaintiffs contain a section regarding improvements that substantially contains the following language: (1) "Title to any building or other improvements of a permanent character that shall be placed upon the leased property by lessee shall vest in lessor, or its assigns, upon the termination of this lease, and lessee acknowledges that it shall not have the right to remove such fixed and permanent improvements from its leased property", or (2) "Title to any buildings or other improvements of a permanent character that shall be erected or placed upon the leased property by the Lessee shall upon the termination of this Lease vest in said Santa Rosa County subject, however, to each and every provision of this Lease. Lessee acknowledges that it shall have no right to remove such fixed permanent improvements from leased property." (Exhibits A, B, C, and D, Defendant's First Notice of Filing).
8. The Plaintiffs are permitted to convey, assign, transfer, or mortgage their leasehold estates without prior written approval of Lessor. (Exhibits A, B, C, and D, Defendant's

First Notice of Filing).

9. The Plaintiffs' lease agreements also include the following provisions: the Plaintiffs as lessees or sub-lessees may use the premises as provided in the lease; the Plaintiffs must maintain the property in a clean, attractive and safe condition; the Plaintiffs must at their own cost and expense, repair and replace and maintain the leased property in a good, safe and substantial condition and shall use all economically reasonable precautions to prevent waste, damage or injury to the leased property; the Plaintiffs must provide for insurance; the Plaintiffs agree that the leased premises are subject to the terms, covenants, conditions, and restrictions of the Prime Lease; in the event of destruction of any building or improvements by fire, windstorm, water or other cause, Plaintiffs must repair or rebuild such building or improvement or be in breach of the lease agreement; all insurance proceeds from the destruction of the premises are payable to the Lessor and the Lessee jointly to assure repair or replacement of the improvements; and Plaintiffs must pay all taxes imposed upon the leased property. (Exhibits A, B, C, and D, Defendant's First Notice of Filing).
10. During and after the term of the lease, the lease agreements do not provide an opportunity for the Plaintiffs to acquire any interest in the improvements through an option to purchase or otherwise. In addition, the lease agreements do not contain a provision providing compensation to the Plaintiffs as a result of the early termination of the lease. Further, the Plaintiffs must surrender possession of the leasehold at the end of the lease term without compensation. (Exhibits A, B, C, and D, Defendant's First Notice of Filing).
11. In tax year 2001, the property appraiser placed the improvements located on the

Plaintiffs' leasehold properties on the tax rolls and imposed real property ad valorem taxes on those improvements.

Grounds for Summary Judgment

The Plaintiffs raise the followings grounds for summary judgment: (1) Plaintiffs do not have equitable or legal title to the improvements under the provisions of the leases; (2) chapter 718, Florida Statutes, does not subject the condominium units to real property ad valorem taxation; (3) the property appraiser lacks standing to assert the defenses that sections 196.199(2)(b) and 199.023(1)(d) are unconstitutional; and (4) sections 196.199(2)(b) and 199.023(1)(d) are constitutional.

The Defendants assert the following grounds for summary judgment: (1) the Plaintiffs may not contest the taxable status of their improvements because they have failed to pay all taxes due on their property as required by section 194.171(3) or Article VII, Section 13 of the Florida Constitution; (2) the Plaintiffs have legal title to the improvements during the lease term; (3) the Plaintiffs are the equitable owners of their improvements; (4) chapter 718, Florida Statutes, creates units of ownership in the condominium units that subjects the units to ad valorem taxes; and (5) Sections 196.199(2)(b) and 199.023(1)(d) are unconstitutional under Article VII of the Florida Constitution and the Equal Protection Clause of the United States Constitution.

Application of Law

Section 194.171(3) and Article VII, Section 13 of the Florida Constitution

The Defendants assert that the Plaintiffs may not contest the taxable status of their leasehold improvements because they have failed to pay all taxes due on their property as required by section 194.171(3), Florida Statutes, and Article VII, Section 13 of the Florida Constitution. Specifically, the Defendants argue that the Plaintiffs admit that they are subject to

intangibles tax pursuant to section 196.199(2) but the Plaintiffs have not paid any intangibles tax on their leaseholds.

Article VII, Section 13 of the Florida Constitution provides that “[u]ntil payment of all taxes which have been legally assessed upon the property of the same owner, no court shall grant relief from the payment of any tax that may be illegal or illegally assessed.” This constitutional provision is not jurisdictional but merely precludes the granting of any relief until the legally assessed taxes are paid. *See Santana v. Metropolitan Dade County*, 641 So.2d 117 (Fla. 3d DCA 1994) (citing *Collins Investment Co. v. Metropolitan Dade County*, 164 So.2d 806, 808 (Fla.1964)). As such, the alleged failure to pay all intangible taxes would not prevent the Plaintiffs from bringing suit to challenge the taxable status of their leasehold improvements.

Unlike Article VII, Section 13 of the Florida Constitution, the requirements of section 194.171(3) are jurisdictional. *See* § 194.171(6), Fla. Stat. (2001). Section 194.171(3), Florida Statutes (2001), provides in pertinent part:

Before an action to contest a tax assessment may be brought, the taxpayer shall pay to the collector not less than the amount of the tax which the taxpayer admits in good faith to be owing. The collector shall issue a receipt for the payment, and the receipt shall be filed with the complaint.

Nonetheless, taxpayers are not required to file a receipt of payment where the taxpayer is not challenging the valuation of an assessment but whether the property is taxable. *See Mikos v. Ringling Bros.-Barnum & Bailey Combined Shows, Inc.*, 475 So.2d 292, 293-94 (Fla. 2d DCA 1985), *approved*, 497 So.2d 630 (Fla.1986). *See also International Soc. for Krishna Consciousness of Miami Beach, Inc. v. Robbins*, 583 So.2d 767, 768 (Fla. 3d DCA 1991) (finding that taxpayer was not required to pay any amount to the tax collector before maintaining suit based on good faith statement that no taxes were owed).

In the instant case, the Plaintiffs are subject to the jurisdictional requirements of section 194.171(3). *See Ward v. Brown*, 28 Fla. L. Weekly D731, (Fla. 1st DCA Mar.13, 2003), *review granted*, 848 So.2d 1157 (Fla. July 14, 2003) (holding that the Plaintiffs are challenging the property appraiser's judgment to deny them an exemption under Chapter 196 and that the denial of exemptions are "assessments" subject to the requirements of section 194.171). A plain reading of section 194.171(3) indicates that the statute only requires the taxpayer to make a good faith payment towards the tax in which he or she challenges, in this instance real property ad valorem taxes. Therefore, the payment or nonpayment of intangibles tax is irrelevant to a challenge to the assessment of real property ad valorem taxes. Consequently, the Plaintiffs have satisfied the jurisdictional prerequisites of section 194.171(3) by alleging the following in paragraph 31 of the Second Amended Complaint:

Plaintiffs do not owe ad valorem taxes on the improvements as the assessment of ad valorem taxes on their improvements is contrary to statute and Florida law and is void. Plaintiffs, in good faith, do not admit that any ad valorem real estate taxes are owed on their leasehold interests. Plaintiffs have otherwise complied with all conditions precedent to the filing of this action.

See Mikos, 475 So.2d at 293-94; *International Soc. for Krishna Consciousness of Miami Beach, Inc. v. Robbins*, 583 So.2d at 768.

Ownership of the Improvements

Unless specifically exempted from taxation, all leasehold interests in government owned property are subject to taxation in the manner provided by law. *See* § 196.001(2), Fla. Stat. (2001). The relevant taxation provisions applicable in the instant case are as follows:

Section 196.199(2)(b), Florida Statutes (2001), provides in pertinent part:

(2) Property owned by the following governmental units but used by nongovernmental lessees shall only be exempt from taxation under the following conditions:

...
(b) ... the exemption provided by this subsection shall not apply to those portions of a leasehold or other interest defined by s. 199.023(1)(d), subject to the provisions of subsection (7). Such leasehold or other interest shall be taxed only as intangible personal property pursuant to chapter 199 if rental payments are due in consideration of such leasehold or other interest. If no rental payments are due pursuant to the agreement creating such leasehold or other interest, the leasehold or other interest shall be taxed as real property. **Nothing in this paragraph shall be deemed to exempt personal property, buildings, or other real property improvements owned by the lessee from ad valorem taxation.**

(emphasis added).

Section 199.023(1)(d), Florida Statutes (2001), provides:

(1) "Intangible personal property" means all personal property which is not in itself intrinsically valuable, but which derives its chief value from that which it represents, including, but not limited to, the following:

...
(d) Except for any leasehold or other possessory interest described in s. 4(a), Art. VII of the State Constitution or s. 196.199(7), all leasehold or other possessory interests in real property owned by the United States, the state, any political subdivision of the state, any municipality of the state, or any agency, authority, and other public body corporate of the state, which are undeveloped or predominantly used for residential or commercial purposes and upon which rental payments are due.

Section 196.199(7), Florida Statutes (2001), states in pertinent part:

(7) Property which is originally leased for 100 years or more, exclusive of renewal options, ... shall be deemed to be owned for purposes of this section.

In light of the statutory language above, the ownership of the improvements constructed on the leasehold will determine their tax status.

Florida law establishes that an owner for tax purposes can have either equitable or legal title. *Page v. Fernandina Harbor Joint Venture By and Through Fernandina Marina Investors, Ltd.*, 608 So.2d 520, 522 (Fla. 1st DCA 1992), *disapproved on other grounds, Sebring Airport Authority v. McIntyre*, 642 So.2d 1072 (Fla. 1994). Under the express terms of the leases in the instant case, the improvements upon the leaseholds remain property of the Plaintiffs until

termination of the lease. *See Marathon Air Services, Inc. v. Higgs*, 575 So.2d 1340, 1340-1341 (Fla. 3d DCA 1991) (holding that a building was not part of government leasehold based on lease language that provided improvements remain the property of the lessee until the conclusion of the lease period). As such, the intent of the lease is to grant legal ownership of the improvements to the Plaintiffs for the duration of the lease.

This ownership provision potentially violates the restrictive conveyance in the Prime Lease that all "leases shall be substantially upon the same terms, consideration, conditions as like leases then in use by the lessor." At the time the Prime Lease was executed, the leases on Santa Rosa Island provided for improvements to the leased property to vest forthwith in Escambia County. Nevertheless, the legal impact of the different title vesting provisions is immaterial because for purposes of ad valorem taxes Florida case law appears to focus on who has equitable ownership of the property rather than legal ownership.¹

The concept of taxing the equitable owners of property rather than the holders of bare legal title is well-established in Florida law. *See First Union National Bank of Florida v. Ford*, 636 So.2d 523, 525 (Fla. 5th DCA 1993). *See also Leon County Educational Facilities Authority v. Hartsfield*, 698 So.2d 526, 528 (Fla. 1997) (stating that "[t]he concept of equitable ownership in ad valorem taxation has long been a part of Florida law."). In determining the taxability of property, courts should look to the substance and not form of the parties' interests.

¹ One notable case decided strictly on legal ownership is *Bell v. Bryan*, 505 So.2d 690 (Fla. 1st DCA 1987). In *Bell*, leaseholders on Santa Rosa Island challenged the assessment of real property ad valorem taxes on the improvements they had constructed on property owned by Escambia County. Emphasizing the language in the lease that the improvements vested immediately in the county, the First District concluded that the improvements were "as much a part of the leasehold as the real property itself." *See id.* at 691-692. Consequently, the appellate court determined that the exemption contained in section 196.199(2)(b) applied to the leaseholds and affirmed the trial court's finding that the improvements should have been assessed at the intangible personal property rate. *See id.* Because the First District did not address equitable ownership, the decision in *Bell* is not controlling in the present case. Furthermore, as discussed in the next section, the Court finds equitable ownership a critical component in determining the taxability of property.

See *Ford*, 636 So.2d at 527. See also *Parker v. The Hertz Corporation*, 544 So.2d 249, 250 (Fla. 2d DCA 1989) (noting that “[i]n the field of taxation, administrators of the laws and the courts are concerned with the substance and realities, and formal written documents are not rigidly binding.”) (quoting *Helvering v. F & R Lazurus & Company*, 308 U.S. 252, 255 (1939)).

A lessee is deemed the equitable owner of the property if the lessee holds “virtually all the benefits and burdens of ownership” of the leased property. See *Robbins v. Mt. Sinai Medical Center, Inc.*, 748 So.2d 349 (Fla. 3d DCA 1999) (citing *Leon County Educational Facilities Authority*, 698 So.2d at 527). A determination of whether the benefits or burdens of ownership have passed to a lessee involves the consideration of several factors and is a fact driven analysis. See *id.* The “benefit and burden” factors considered by Florida courts include the following: (1) the length of the lease in regards to the useful life of the property; (2) right to encumber the property with debt; (3) option to purchase or remove the leased property at the end of the lease term; (4) right of possession and control; (5) right to dispose of, alienate, or transfer property rights freely and without interference and restraint; (6) right to receive income from rental; (7) obligation to insure property; (8) responsibility to maintain and repair property; and (9) duty to pay taxes. See generally *Offutt Housing Company v. County of Sarpy*, 351 U.S. 253 (1956); *Leon County Educational Facilities*, 698 So.2d at 526-530; *Gay v. Jemison*, 52 So.2d 137 (Fla. 1951); *Robbins*, 748 So.2d at 351-352; *Parker*, 544 So.2d at 250-252; *Hialeah, Inc. v. Dade County*, 490 So.2d 998 (Fla. 3d DCA 1986).

In the instant case, the Plaintiffs have the right to use or rent the improvements for the lease term plus renewal as long as they observe the lease conditions. The Plaintiffs may encumber the leasehold interests with debt and have the right to transfer their property rights. They can realize the appreciation in value from a sale as well as the right to receive rental

income. If the improvements are damaged, the Plaintiffs are obligated to repair or rebuild. Furthermore, the Plaintiffs must insure and maintain the improvements and are responsible for any taxes. In light of the above factors, the lease provides the Plaintiffs with sufficient indicia of ownership of the improvements to convey equitable title.

In determining that the Plaintiffs are the equitable owners of the improvements, the Court placed emphasis on the length of the ground leases in relation to the useful lives of the Plaintiffs' improvements. See, e.g., *Offutt Housing Company*, 351 U.S. at 261 (attributing the full value of the improvements on a federal leasehold to the lessee because the lessee would enjoy the entire worth of the buildings, which had an estimated useful life of 35 years, over the 75 year lease term); *Gay*, 52 So.2d at 137-138 (finding that a housing project constructed on federal land was equitably owned by the lessee based in part on the fact that the useful life of the building would end prior to the expiration of the 75 year lease); *Brookley Manor, Inc. v. State*, 90 So.2d 161 (Ala. 1956) (holding that housing project constructed, maintained, and operated on federal land for 75 years under lease was subject to ad valorem taxes even though the lease provided that all improvements would revert back to the government without compensation to the lessee). But see *Metropolitan Dade County v. Brothers of the Good Shepherd, Inc.*, 714 So.2d 573 (finding that assignee of 99 year lease was not the equitable owner of home built on a government leasehold based primarily upon the fact that the assignee had to surrender the improvements to the landlord at the end of the lease term without compensation).² In *Archer v. Marshall*, 355 So.2d 781 (Fla. 1978), the Florida Supreme Court discussed the trial court's rationale with respect to the improvements of leaseholders on Santa Rosa Island:

² Noting the Third District Court of Appeal never addressed the useful life of the improvement in relation to the length of the lease, the Court finds that the opinion in *Brothers of the Good Shepherd* is distinguishable from the present case.

... since substantially all of these leases are for 99 years plus a 99 year option to renew, it cannot be said that Escambia County has or will receive any improvements of value upon the termination of the lease agreements. Certainly the improvements which have been made upon this property will have long since been destroyed prior to the end of the leases. Since these leaseholders have the equivalent of fee simple ownership, it does not appear that they have enriched the county in any manner by building on the land.

Archer, 355 So.2d at 784. See also *Williams v. Jones*, 326 So.2d 425, 436 (Fla. 1975) (stating that “a lease for a term of 99 years or more is tantamount to ownership of the fee.”). This Court agrees with the rationale expressed in *Archer*. The fact that the economic and useful lives of the Plaintiffs’ improvements will expire well before the expiration of the lease supports the Court’s holding that the Plaintiffs are the equitable owners of the improvements.³

Moreover, the Plaintiffs ability to “own” their real property improvements under section 196.199(2)(b) is not impacted by the fact that the ground leases in the instant case are for less than the statutory declaration of 100 years under section 196.199(7). See *Parker*, 544 So.2d at 251. There is nothing within section 196.199(7) barring the examination of extrinsic criteria in deciding the question of ownership under section 196.199(2)(b). *Id.* Consequently, having determined that the Plaintiffs are the equitable owners of their improvements, those improvements are subject to ad valorem taxes. See § 196.199(2)(b), Fla. Stat. (2001) (providing that “[n]othing in this paragraph shall be deemed to exempt personal property, buildings, or other real property improvements **owned** by the lessee from ad valorem taxation.”) (emphasis added).

³ For depreciation purposes under the Internal Revenue Code, the applicable recovery period or estimated useful life for residential rental property is generally 27.5 years and nonresidential real property is generally 39 years. See 26 U.S.C. § 168. The tax filings in the record reveal that the Wards and Coleys claimed an estimated useful life of 27.5 years on their units and Weidlich claimed a useful life of 31.5 years. In his answer to interrogatories, Mathew Gardner estimated the remaining useful life of his real property improvements at 40 years based upon his knowledge of the number of years generally used to estimate the economic life of property for purposes of mortgage financing. The Court acknowledges that the useful life of an asset is only an estimate as to the time period the asset is reasonably expected to be useful to the taxpayer and that it does not represent the useful life inherent in the asset or the physical life of the asset. See 47A *Internal Revenue* § 239 (2004). Nevertheless, while the estimated useful life

This Court's holding on the equitable ownership issue makes it unnecessary to consider the issue involving chapter 718, Florida Statutes. Furthermore, because the case can be decided on other grounds, the Court declines to address the constitutionality of sections 196.199(2)(b) and 199.023(1)(d). *See M.Z. v. State*, 747 So.2d 978 (Fla. 1st DCA 1999) (declining to address constitutional issue on basis that constitutional questions should be decided in a case only when they are necessary to the disposition of that case).

Accordingly, it is **ORDERED AND ADJUDGED** as follows:

1. The Plaintiffs' Motion for Partial Summary Judgment is **DISMISSED**. The Court did not address the merits of the motion because the equitable ownership issue is dispositive.
2. The Plaintiffs' Motion for Summary Judgment is **DENIED**.
3. The Defendants' Amended Motion for Summary Judgment is **GRANTED**. For the reasons set forth above, the Plaintiffs are the equitable owners of their improvements and the improvements are subject to ad valorem taxation.
4. This Order shall constitute Final Judgment in this action.

DONE AND ORDERED in Chambers at the Santa Rosa County Courthouse, Milton, Florida, on this 18th day of March 2004.


Paul A. Rasmussen, Circuit Judge

Copies to:
Donald H. Partington, Esquire
Benjamin K. Phipps, Esquire
Joseph C. Mellichamp, III, Esquire
Roy V. Andrews, Esquire
Elliott Messer, Esquire
Thomas Findlay, Esquire

and actual life of the improvements may vary, the Plaintiffs will still substantially enjoy the entire useful and economic lives of their improvements given the substantial unexpired terms of their ground leases.

D

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

Copies furnished to:

- ✓ Thomas M. Findley, Esq., P O Box 15579, Tallahassee, FL 32317
- Elliott Messer, Esq., P O Box 15579, Tallahassee, FL 32317
- M. J. Menge, Esq., 226 So. Palafox, 9th Floor, Pensacola, FL 32502
- Danny L. Kepner, Esq., 226 So. Palafox, 9th Floor, Pensacola, FL 32502

E

IN THE CIRCUIT COURT OF THE FIRST
JUDICIAL CIRCUIT, IN AND FOR
ESCAMBIA COUNTY, FLORIDA

AMERICAN FIDELITY LIFE
INSURANCE COMPANY, and
TRANSWORLD ASSURANCE
COMPANY,

Plaintiffs

v.

CASE NO.: 2004 CA 002292
DIVISION: F

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

Defendants.

**ORDER GRANTING DEFENDANTS'
MOTION FOR SUMMARY JUDGMENT
AND ENTRY OF FINAL JUDGMENT**

THIS MATTER came on for hearing before the Court upon Defendants' motion for summary judgment. The Court having reviewed the motion, record evidence, and the memoranda filed in support and opposition to the motion, having heard argument of counsel, and being otherwise fully advised in the premises, it is hereby **ORDERED AND ADJUDGED THAT:** The Defendants' Motion for Summary Judgment is granted. In support of this Order, the Court makes the following findings of fact:

FACTUAL FINDINGS.

1. The land presently underlying the Plaintiffs' improvements was conveyed by the United States of America to Escambia County in 1947. By Special Act, the Legislature created the Santa Rosa Island Authority ("SRIA") to serve as agent for Escambia County and to lease

such land on Santa Rosa Island for development. Ch. 24500, Laws of Florida (1947).¹ Both Escambia County and Santa Rosa County have subleased parts of this same tract of land to private parties, including the Plaintiff businesses.

2. In the case at bar, the Plaintiff corporations own condominium units built on land that was originally leased by the SRIA to a private party for a 99-year term, with an option to renew for a further term of 99 years. *See* Complaint and Lease Exhibits attached thereto.

3. The leased land was ultimately transferred to the developer of the Beach Club Condominiums. *See Complaint, Par. 2.* In 1986, the developer filed the Declaration of Condominium for the Beach Club. *See Defendants' Notice of Filing, Exhibit I-Tab D.* The SRIA joined in the declaration. The purpose of the Declaration of Condominium was to submit the improvements to "condominium ownership." *Id.; see also Defendants' Notice of Filing, Exhibit II - Admission #12* (Plaintiffs admitting that the filing of the declaration "had the effect of submitting the improvements at issue to condominium ownership").

4. After the declaration of condominium created the Beach Club condominium units, the Plaintiff corporations acquired twenty-five (25) of the units as investment property. *See Complaint, par. 2.* The Plaintiff corporations rent their condominium units to third parties. *See Defendants' Notice of Filing, Exhibit I-B.*

5. The underlying land lease provides that neither the SRIA nor Escambia County will have the legal title to any buildings or improvements until the termination of the land lease. The pertinent portions of the leases state: "Title to any building or other improvements of a

¹ A portion of this land was leased to Santa Rosa County. Thus, the land underlying the Plaintiffs' improvements is part of the same federal land grant involved in *Ward v. Brown*, 919 So.2d 462 (Fla. 1st DCA 2005).

permanent character that shall be placed upon the Leased Property by Lessee shall vest in Lessor [i.e., SRIA], or its assigns, upon the termination of this Amended Lease” See *Complaint*, Par. 5.

6. The underlying lease obligates the land lessee or their assigns to pay “all existing and future taxes [and] assessments” on the property during this period. Moreover, the condominium documents and statutes provide the exclusive right of possession and control to the Plaintiffs for each condominium unit at issue. See *Defendants’ Notice of Filing, Exhibit I-Tab D*, p. 2 (committing improvements to “condominium ownership;” see also §718.106(3), Fla. Stat. (2004)(granting exclusive right of possession and control to condominium unit owners).

7. The Plaintiffs enjoy the rental income from the condominium units for their own benefit. See *Defendants’ Notice of Filing, Exhibit I-Tabs B and E* (annual financial statements and income tax returns). The 2004 financial statement for Plaintiff Trans World Assurance Company lists “real estate owned” by that Plaintiff corporation to include over \$1.5 million in real estate at the Beach Club Condominiums. See *Defendants’ Notice of Filing, Exhibit I-Tab B, 2004 Annual Statement*. The same statement shows that the taxpayer has written off close to \$400,000 in depreciation deductions for their Beach Club condominium properties. Similarly, Plaintiff American Fidelity Life Insurance Company, on its 2004 annual statement, lists approximately \$1.5 million in additional real estate owned at the Beach Club and a similar history of close to \$400,000 in depreciation write downs. *Id.*, *2004 Annual Statement for American Fidelity*. The Plaintiff corporations admit that they enjoy the depreciation and other deductions relating to the ownership of these properties for their own tax benefit. See, e.g., *Defendants’ Notice of Filing, Exhibit II, Admission #9*.

8. The Plaintiffs have the full right to sell their condominium units. The Plaintiffs also have the right to freely encumber their properties with mortgages. *See Defendants' Notice of Filing, Exhibit II - Admission #11.* Neither the SRIA nor the County does any maintenance or repair on the subject properties. *See Defendants' Notice of Filing, Exhibit III, Interrogatory Answer #18.* Instead, the Plaintiffs bear the full burden of repairing, maintaining and insuring their units, while the Beach Club Condominium Association, of which Plaintiffs are members, has the full responsibility for the maintenance, repair and insurance for the exterior of the condominium. *Defendants' Notice of Filing, Exhibit I - Tab D, p. 12-13.* The land lease also confirms that the full burdens of repair, maintenance, insurance and the payment of taxes and other obligations associated with the properties lies with the Plaintiffs. *See, Complaint, Lease Exhibits.* The Plaintiffs maintain full insurance coverage at their own cost for their sole benefit with respect to the interior of their condominium units while the condominium association pays for the insurance on the remainder of the buildings, as funded by condominium unit owner assessments. *Defendants' Notice of Filing, Ex. A, p. 21-22.*

CONCLUSIONS OF LAW.

1. Introduction.

Plaintiffs' argument that their improvements are to be classified as intangibles and therefore are exempt from real property ad valorem taxation must be "strictly construed" against them. §196.001(1), Fla.Stat. (all real property in this state is subject to tax, unless "expressly" exempt); *Sebring Airport Authority v. McIntyre*, 642 So.2d 1072, 1073 (Fla. 1994). An interlocutory appeal in *Ward v. Brown*, 894 So.2d 811 (2003)(*Brown I*), addressed the question of whether similarly situated leaseholders on Navarre Beach were seeking an exemption. The

Supreme Court of Florida concluded: “We also reject the petitioners’ claim that they are not claiming an exemption.” *Id.* at 816. The Supreme Court cited the very statute at issue in this case, section 196.199(2), in noting: “It is apparent that petitioners are seeking some form of the ‘exemption’ related to government-owned and leased property.” *Id.* This Court must also follow the principle that substance controls over form in matters relating to the imposition of taxes. *Parker v. Hertz Corporation*, 544 So.2d 249, 250 (Fla. 2d DCA 1989).

The assessments in this case are directed to the condominium units, which are units of real property under Chapter 718, Florida Statutes. The Property Appraiser Chris Jones determined that the units fall squarely within the language of section 196.199(2)(b), Florida Statutes, which addresses the application of the governmental exemption to improvements built by private parties on government leaseholds. That subsection provides: “Nothing in this paragraph shall be deemed to exempt . . . buildings, or other real property improvements owned by the lessee from ad valorem taxation.”

II. Application of *Ward v. Brown*.

In *Ward v. Brown*, Case No. 01-892-CA01-DJ, this Court held on March 18, 2004, that taxpayers, with substantially similar lease agreements on Navarre Beach in Santa Rosa County, were the equitable owners of their improvements. The leases involved in Santa Rosa County were required to be “substantially upon the same terms, considerations, conditions as like leases then in use [in Escambia County].” *See Ward Order* at p. 9. The *Ward Order* was affirmed by the First District Court of Appeal. *Ward v. Brown*, 919 So.2d 462 (Fla. 1st DCA 2005). In *Ward v. Brown*, this Court concluded that the plaintiffs in Santa Rosa County bore virtually all of the relevant burdens and benefits of ownership. On appeal, the First District affirmed, holding: “Because we agree with the trial court that appellants have sufficient rights and duties regarding

the property to make them equitable owners, we affirm.” *Ward v. Brown*, 919 So.2d at 463 (citing *Serv. Metro Corp. v. Bell*, 786 So.2d 1216 (Fla. 1st DCA 2001) and *Leon County Educ. Facilities Auth. v. Hartsfield*, 698 So.2d 526 (Fla. 1997)).

After *Ward v. Brown*, this Court again determined that similarly situated taxpayers on Pensacola Beach were subject to real property ad valorem taxation in the case of *Alvin's Stores v. Chris Jones*, Case No. 04-2281-CA-01. The *Alvin's Stores* litigation involved thirty-seven plaintiffs who were determined to be the equitable owners of improvements built on leaseholds from the Santa Rosa Island Authority. The trial court's decision was affirmed per curiam by the First District Court of Appeal in Case No. 1D07-0149. In addition, this Court held in *Portofino Tower One Homeowners Association v. Chris Jones*, Case No. 04-CA-2288, that Portofino condominium unit owners were subject to ad valorem taxation at local government tax rates. That case is now on appeal.

Like the plaintiffs in those prior cases, the Plaintiffs in this case enjoy the benefits and bear the burdens of ownership. The Plaintiffs enjoy the rental income and the right to capital appreciation on each of their units. They also enjoy the right to depreciate the units for federal tax purposes. See *Defendants' Notice of Filing, Answers to Requests for Admissions, Numbers 4*. The Plaintiffs in this case bear the burdens of ownership, including the burdens to repair, maintain and insure their properties. See *Defendants' Notice of Filing, Responses to Requests for Admissions*. They are also responsible for the payment of any and all taxes associated with their properties. *Id.* The Plaintiffs bear the full risk of loss on the improvements. All of these obligations are expressed in the terms of the leases filed in this case. Because the Plaintiffs bear all of essential burdens and benefits of ownership, *Ward v. Brown* dictates that the Plaintiffs are

considered to be the owners of their condominium units for real property ad valorem tax purposes.

In addition to the general "benefits and burdens" analysis conducted by this Court and the First District Court of Appeal in *Ward v. Brown*, the First District also expressly held that any leasehold with an initial term of over 98 years must be considered to be the equivalent of ownership under the Florida Constitution. The First District held: "[T]he Florida Constitution expressly contemplates equitable ownership for leases with **initial** terms of 99 years by providing homestead exemptions for leaseholds in excess of 98 years." *Id.* at 464 (citing *Art. VII, §6(a), Fla. Const.*). Based on the foregoing, *Ward v. Brown* is dispositive of the issues presented in the instant case.

This Court also places reliance on decisions of the United States Supreme Court, the Supreme Court of Florida, and this Court in *Ward v. Brown*, analyzing the length of the lease in relation to the useful life of the improvements. The Supreme Court of Florida relied on this factor in *Archer v. Marshall*, 355 So.2d 781, 784 (Fla. 1978):

[I]t cannot be said that Escambia County has or will receive any improvements of value upon the termination of the lease agreements. Certainly the improvements which have been made upon this property [specifically, on Pensacola Beach] will have long since been destroyed prior to the end of the leases.

See also Gay v. Jemison, 52 So.2d 137 (Fla. 1951); *Offutt Housing Company v. County of Sarpy*, 351 U.S. 253 (1956).

Here, the Plaintiffs admit that they depreciate the improvements at issue on their tax returns. *See Defendants' Notice of Filing, Answers to Requests for Admissions, Numbers 4.* The enjoyment of depreciation deductions is a recognition that the depreciated portion of the improvements has been fully enjoyed by that Plaintiff. In *Parker v. Hertz*, a case involving a

private corporation that leased government land for a term of 25 years, the Second District Court of Appeal held: “Hertz’s proprietary use of the improvements for its commercial objectives, when coupled with the benefit of recapturing some amount of its capital investment through depreciation, was perceived by it from the beginning as ample compensation for subsequently parting with title.” *Parker v. Hertz*, 544 So.2d at 252.

The Plaintiffs cite *Bell v. Bryan*, 505 So.2d 690 (Fla. 1st DCA 1987) in support of their claim for an exemption from taxation. The *Bell v. Bryan* decision, however, was expressly rejected by the First District in *Ward v. Brown*. The First District concluded: “We agree with [Property Appraiser Greg Brown] that *Bell v. Bryan*, 505 So.2d 690 (Fla. 1st DCA 1987), is not controlling because **the issue of equitable ownership was not addressed.**” *Ward v. Brown*, 919 So.2d 464, n. 2. This Court is constrained to follow the pronouncement of the First District in *Ward v. Brown*.

III. Legal Ownership.

The Plaintiffs in this case not only have equitable ownership, but they also are the legal owners of the condominium units at issue. The Complaint, at Paragraph 5, quotes the pertinent language from Paragraph X of the ground lease, as follows: “Title to any building or other improvements . . . shall vest in Lessor [SRIA] upon the **termination** of this Amended Lease” Thus, neither the SRIA nor Escambia County will have legal title to the improvements in this case and will never have such title as long as the leases are renewed.

Condominium units under Chapter 718 are separate units of ownership. This ownership right is exclusive, despite the existence of a ground lessor’s rights. Fla.Stat. §718.103(27). Section 718.106(1), Florida Statutes, specifically provides: “A condominium parcel created by the declaration is a separate parcel of real property, even though the condominium is created

on a leasehold.” In fact, the SRIA, by joining in, or consenting to, the declaration of condominium agreed that any interest that it maintained in the property would be subjected to the condominium form of ownership, which includes the classification of each unit as real property. *See* Fla. Stat. §718.104(6) (2004). Each of these statutorily created units of real property is subject to separate assessment of ad valorem taxation. Fla. Stat. §718.120 (2004).

IV. Constitutional Construction.

In construing the legal arguments made in this case, this Court has been mindful of the maxim that statutes must be read in a manner that is consistent with the Florida Constitution. Thus, this Court is required to construe the governmental exemption statute found at Section 196.199(2)(b), Florida Statutes, in a manner that avoids an unconstitutional result. Based on the holding of the Supreme Court of Florida in *Williams v. Jones*, 326 So. 2d 425, 432 (Fla. 1975), an unconstitutional result occurs when equitable owners of Pensacola Beach real property escape real property ad valorem taxation, while similarly situated residents on the mainland bear the full tax burden. In *Williams v. Jones*, the Supreme Court of Florida addressed the ramifications of the identical argument made by the Plaintiffs in this case, i.e., that Pensacola Beach residents should be taxed only at an intangible tax rate. The Supreme Court of Florida held: “Basically, the appellants [on Pensacola Beach] contend for a constitutional exemption from ad valorem real estate taxation where none exists and, *if it did*, such an exemption would undoubtedly be discriminatory and violative of the equal protection provisions of the Florida and United States Constitutions.” *Id.* at 432.

In this case, it is not disputed that all of the relevant properties are used purely for private purposes. *See Answers to Requests for Admissions, Numbers 8-10.* Without the collection of real property ad valorem taxes from the Plaintiffs and the other residents of the beach, the

Plaintiffs would pay nothing to the general fund of Escambia County. *See Lovoy Affidavit.* Consequently, this Court construes the relevant statutes to support the imposition of ad valorem taxes at real property rates on the condominium units at issue, which are used by the Plaintiffs for the production of purely private income. In *Straughn v. Camp*, 293 So.2d 689 (Fla. 1974), in the context of Pensacola Beach, the Supreme Court of Florida held that it is “the utilization of leased property from a governmental source that determines whether it is taxable under the Constitution.” *See also Sebring Airport Authority v. McIntyre*, 783 So.2d 238, 243 (Fla. 2001)(striking a statute as unconstitutional where it attempted to define a profit-making venture as serving a public purpose; the Court held: “[the statute] 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.”)

V. Summary.

The Court finds that the Plaintiffs have both legal title and equitable ownership of their condominium units. The Plaintiffs’ condominium units are used for purely private purposes, including the production of income. The Florida Constitution requires that the Plaintiffs pay ad valorem taxes at local government rates at parity with other citizens of Escambia County. Therefore, this Court grants the Defendants’ Motion for Summary Judgment and enters Final Judgment in favor of the Defendants. The Plaintiffs shall take nothing by this action and the Defendants shall go hence without day.

DONE and ORDERED this 13th day of December, 2007, in Pensacola, Escambia County, Florida.

BY THE COURT:

/s/ JAN SHACKELFORD

Judge Jan Shackelford

Original: Clerk
Copies to: T. Larry Hill, Esquire
J. Elliott Messer, Esquire
Thomas M. Findley, Esquire

7

IN THE CIRCUIT COURT IN AND FOR ESCAMBIA COUNTY, FLORIDA

PORTOFINO TOWER ONE HOMEOWNERS
ASSOCIATION AT PENSACOLA BEACH, INC.,

Plaintiff,

CASE NO. 2004 CA 2288

vs.

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

Defendants.

CLERK OF DISTRICT COURT
ESCAMBIA COUNTY, FLORIDA
2007 MAR 26 P 3 41
CLERK OF DISTRICT COURT
ESCAMBIA COUNTY, FLORIDA

FINAL SUMMARY JUDGMENT

The Parties, through their attorneys of record, have stipulated that all material facts are not in dispute and the case is ripe for a ruling on a summary judgment.

The Plaintiff, Portofino Tower One Homeowners Association at Pensacola Beach, Inc. and the Defendants, Chris Jones, Property Appraiser for Escambia County, Florida and Janet Holley, Tax Collector for Escambia County, Florida have all filed Motions for Summary Judgment.

The Court will not recite the undisputed material facts since all parties have stipulated.

The Court has considered the undisputed material facts and the applicable Florida Statutes and the Florida Constitution, as well as the case law submitted by all parties. The Court also has considered the briefs filed by all parties, as well as all oral arguments.

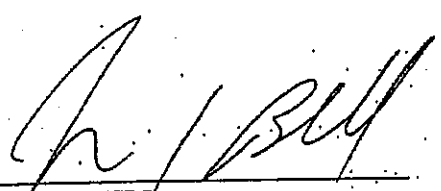
IN CONSIDERATION of all the above, the Court hereby denies the Plaintiff's Motion for Summary Judgment.

Case: 2004 CA 002288
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Dkt: CA1036 Pg#: 2

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IN CONSIDERATION of all the above, the Court hereby grants the Defendant, Chris Jones, Property Appraiser's, Motion for Summary Judgment and the Court hereby grants the Defendant; Janet Holley, Tax Collector's, Motion for Summary Judgment.

DONE AND ORDERED in Chambers at Pensacola, Escambia County, Florida, this the th 26 day of March, 2007.


FRANK L. BELL
CIRCUIT JUDGE

✓
Copies furnished to:

nel
3/26/09
Edward P. Fleming, Esquire
R. Todd Harris, Esquire
Louis K. Rosenbloum, Esquire
Elliott Messer, Esquire
Thomas F. Findley, Esquire

6

IN THE CIRCUIT COURT OF THE FIRST
JUDICIAL CIRCUIT, IN AND FOR SANTA ROSA
COUNTY, FLORIDA

LEWIS Y. and BETTY T. WARD, et al.,

CASE NO.: 02-918-CA; 03-837-CA;
04-857-CA; 05-1039-CA
CLASS REPRESENTATION

Plaintiffs,

vs.

GREGORY S. BROWN, Property Appraiser
of Santa Rosa County, Florida and
ROBERT G. McCLURE, Tax Collector
for Santa Rosa County, Florida,

Defendants.

STIPULATED JUDGMENT OF DISMISSAL

This cause came before the Court on the parties' application and in response to the Plaintiffs' proposed dismissal of the pending class actions in the above-referenced cases. The Court, having reviewed the motion and file, and being advised of the parties' stipulation, hereby ORDERS and ADJUDGES as follows:

1. Final Judgment is entered in favor of the Defendants. The Plaintiffs shall take nothing by this action and the Defendants shall go hence without day and recover costs from Plaintiffs in the amount of \$4,112.89.

2. The stay that had been in effect as a matter of law during the pendency of this action by the authority of Section 194.171, Florida Statutes, is lifted. As a result of this judgment, each member of each Plaintiff class is directed to pay all outstanding ad valorem taxes challenged in Cases Number 02-918-CA, 03-837-CA, 04-857-CA, and 05-1039-CA, in the amounts assessed for

each year at issue, plus 12% interest from the time that such taxes were originally due in each of the relevant tax years.

3. This Judgment shall not preclude the Plaintiffs or class representatives from challenging assessments for future years (2006 and beyond) based on changed factual circumstances or subsequent court decisions or statutory changes.

DONE and ORDERED in Chambers, Santa Rosa County, Milton, Florida this 18 day of July, 2006.

SI R. V. SWANSON
RON SWANSON
CIRCUIT JUDGE

cc: Counsel of Record

H

IN THE CIRCUIT COURT IN AND FOR ESCAMBIA COUNTY, FLORIDA

AZURE DEVELOPMENT, LLC, et al.,
Plaintiffs

vs.

CASE NO: 2006-CA-2337
DIVISION: J

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

Defendants.

STIPULATED JUDGMENT OF DISMISSAL

This cause came before the Court on the parties' stipulation to have judgment entered as set out herein. The Court being fully advised in the premises, it is **ORDERED and ADJUDGED** as follows:

1. Final judgment is entered in favor of the Defendants. The Plaintiffs shall take nothing by this action and the Defendants shall go hence without day and recover no costs from Plaintiffs.

2. The stay that had been in effect as a matter of law during the pendency of this action by the authority of Section 194.171, Florida Statutes, is lifted. As a result of this judgment, each Plaintiff is directed to pay all outstanding ad valorem taxes on leasehold improvements challenged in this action in the amount assessed for the year of 2006, plus 12% interest from April 1, 2007.

3. The Final Judgment shall not preclude the Plaintiffs from challenging assessments for future years (2008 and beyond) based on changed factual circumstances or subsequent court decisions or statutory changes.

DONE and ORDERED in chambers, in Pensacola, Escambia County, Florida, this 3rd day of January, 2008.

/s/ MICHAEL JONES

CIRCUIT JUDGE

Copies furnished to:

Danny L. Kepner
Elliott Messer, Esquire and
Thomas M. Findley, Esquire

I

IN THE CIRCUIT COURT IN AND FOR ESCAMBIA COUNTY, FLORIDA

1000 HIGHWAY 98 EAST CORP., et al.,

Plaintiffs

vs.

CASE NO: 2005-CA-2344

DIVISION: K

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

Defendants.

STIPULATED JUDGMENT OF DISMISSAL

This cause came before the Court on the parties' stipulation to have judgment entered as set out herein. The Court being fully advised in the premises, it is **ORDERED and ADJUDGED** as follows:

1. Final judgment is entered in favor of the Defendants. The Plaintiffs shall take nothing by this action and the Defendants shall go hence without day and recover no costs from Plaintiffs.

2. The stay that had been in effect as a matter of law during the pendency of this action by the authority of Section 194.171, Florida Statutes, is lifted. As a result of this judgment, each Plaintiff is directed to pay all outstanding ad valorem taxes on leasehold improvements challenged in this action in the amount assessed for the year of 2005, plus 12% interest from April 1, 2006.

3. The Final Judgment shall not preclude the Plaintiffs from challenging assessments for future years (2008 and beyond) based on changed factual circumstances or subsequent court decisions or statutory changes.

DONE and ORDERED in chambers, in Pensacola, Escambia County, Florida, this 17th day of Feb January, 2008.

/s/ TERRY TERPESL

CIRCUIT JUDGE

Copies furnished to:

Danny L. Kepner
Elliott Messer, Esquire and
Thomas M. Findley, Esquire