

IN THE CIRCUIT COURT IN AND FOR ESCAMBIA COUNTY, FLORIDA

1108 ARIOLA, LLC, et al.,

Plaintiffs

vs.

CASE NO: 2004-CA-002290

DIVISION: J

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

Defendants.

FIRST AMENDED COMPLAINT

Plaintiffs, whose names are listed on Schedule A attached hereto and made a part hereof, sue Defendants, Chris Jones, Property Appraiser for Escambia County, Florida ("Property Appraiser"), and Janet Holley, Tax Collector for Escambia County, Florida ("Tax Collector"), and allege:

General Allegations

1. This is an action for a declaratory judgment, estoppel and injunctive relief pursuant to Chapter 86 and Chapter 194, Florida Statutes, and general law.

2. Plaintiffs have leasehold interests in various properties located on Pensacola Beach, Escambia County, Florida, by virtue of leases they or their sublessors, or their predecessor lessees or sublessors, entered into with Santa Rosa Island Authority ("SRIA"), as an agency of Escambia County, Florida. Each

of the leases requires the lessees to erect specified improvements on their leased properties.

3. Escambia County, Florida, owns the land and the fixed improvements on the land which are leased to the Plaintiffs.

4. The original term of all of the Plaintiffs' leases is for a period of less than one hundred years. The leased premises are predominantly used for residential purposes. All of the Plaintiffs are required to pay rental payments for the leased premises to SRIA.

5. The Florida Legislature has defined leasehold estates of less than one hundred years in governmentally owned property, which are undeveloped or predominantly used for residential or commercial purposes, and upon which rental payments are due, as intangible personal property.

6. This Court and the First District Court of Appeal in Bell v. Bryan, 505 So.2d 690 (Fla. 1st DCA 1987), rev. den. 513 So.2d 1060 (Fla. 1987), and Bell v. Bryan, 519 So.2d 1024 (Fla. 1st DCA 1988), in its affirmation of this Court's rulings, declared that the leasehold improvements on Pensacola Beach leased by Ruepert D. Bryan, et al., were owned by Escambia County, Florida, found the leasehold improvements had been classified by the Florida Legislature as intangible personal property, and adjudged the tax certificates issued by the tax collector for unpaid real property taxes to be invalid and unenforceable.

7. The Florida Statutes relied upon by this Court and the appellate court in the decisions rendered in Bell v. Bryan, supra, are the same statutes that

govern this case, and the provisions in the leases of Ruepert D. Bryan, et al., that were material to this Court and the appellate court in Bell v. Bryan, *supra*, are also contained in the Plaintiffs' leases.

8. Notwithstanding the statutes enacted by the Florida Legislature and the appellate court's decisions interpreting those statutes, the Property Appraiser has appraised the Plaintiffs' leasehold and possessory interests in the improvements erected on their leased properties on Pensacola Beach as real property and has certified the appraised value of those improvements for taxation in 2004 as real property, and the Tax Collector has levied real property taxes for 2004 on said leasehold improvements and is attempting to collect real property taxes from the Plaintiffs on their leasehold improvements.

9. Plaintiffs seek a declaration that their leasehold interests in the properties located on Santa Rosa Island, Escambia County, Florida, have been defined by the Florida Legislature and by law as intangible personal property for purposes of taxation; that the buildings and improvements of a permanent character erected on the leased properties are a part of the Plaintiffs' leasehold estates; that the leasehold improvements are owned by Escambia County, Florida; that the Property Appraiser's appraisal of the Plaintiffs' leasehold and possessory interests in the buildings and other improvements of a permanent character erected on the leased properties as real property, and the Property Appraiser's certification of said improvements as being subject to county real property taxes were and are improper, illegal and void acts; and that the Tax

Collector's levying and collecting real property taxes on said improvements were and are improper, illegal and void acts.

10. Further, Plaintiffs allege that the Defendants should be estopped from appraising their leasehold improvements as real property and from collecting real property taxes on the appraised value of their leasehold improvements.

11. Plaintiffs also seek an injunction against the Property Appraiser enjoining the appraisal of their leasehold improvements as real property, and against the Tax Collector enjoining the collection of county real property taxes assessed on the appraised value of their leasehold improvements, enjoining the sale of tax certificates to collect such taxes, and a refund of any real property taxes paid by any of the Plaintiffs.

12. Venue is proper in this County by virtue of Section 194.171(1) Florida Statutes.

13. This Court has original jurisdiction of this matter pursuant to Sections 26.012(2)(e), 86.011, 86.061, 197.122 and 194.171(1), Florida Statutes. This action has been timely filed.

Background

14. In 1947, the United States of America deeded that portion of Santa Rosa Island pertinent to this litigation to Escambia County, Florida. A copy of that deed is attached hereto as Exhibit 1, and its provisions are made a part hereof as if fully set forth herein.

15. To administer that portion of Santa Rosa Island deeded to Escambia County (hereinafter referred to as "Pensacola Beach"), the Florida Legislature, through Chapter 24,500, Laws of Florida, Special Acts of 1947, created SRIA as an agency of Escambia County, and charged SRIA with the responsibility, among other things, of leasing portions of Pensacola Beach.

16. The Florida Legislature in 1949, enacted Chapter 25,810, Laws of Florida, Special Acts of 1949, declaring that the leasehold interests created by the leases entered into by SRIA would be exempt from taxation.

17. In the 1960's, SRIA embarked on an aggressive campaign to attract residents, businesses, and investors to Pensacola Beach. One of the most substantial selling points advertised by SRIA was that the leasehold estates would not be subject to taxation. Several residents, businesses and investors entered into leases with SRIA, based on these advertised promises.

18. In 1971, the Florida Legislature, through Chapter 71-133, Laws of Florida, repealed its previous legislation exempting the leasehold interests in governmentally owned property from taxation, and classified all leasehold estates in governmentally owned property as real property for purposes of taxation.

19. The foregoing actions of the Florida Legislature were challenged in the courts as an unconstitutional impairment of contract and on other grounds, but the Florida Supreme Court found the law to be constitutional in the landmark cases of Straughn v. Camp, 293 So.2d 689 (Fla. 1974), and Williams v. Jones, 326 So.2d 425 (Fla. 1976). The basic holding of the Florida Supreme Court in

those cases was that the Florida Legislature has the right to classify the leasehold estates at Pensacola Beach for purposes of taxation, and its classification of the leasehold estates as real property was not unreasonable or unconstitutional.

20. Escambia County's local legislative delegation, understanding the inequity of subjecting the Pensacola Beach properties to taxation, contrary to the promises of SRIA, introduced and succeeded in having enacted into law various special acts in 1976 granting some relief to the lessees. See Chapter 76-361, Laws of Florida; Chapter 76-362, Laws of Florida; and Chapter 76-368, Laws of Florida, all being Special Acts of 1976. The Florida Supreme Court found these special acts to be unconstitutional. See Archer v. Marshall, 355 So.2d 781 (Fla. 1978), and American Fidelity Insurance Co. v. Kenney, 360 So.2d 415 (Fla. 1978).

21. Effective as of 1980, the Florida Legislature modified the taxation laws applicable to leasehold or other possessory interests in real property owned by the government. Section 199.023(1)(d), Florida Statutes defines all leasehold or other possessory interests in real property owned by the government (with certain exceptions), which are undeveloped or predominantly used for residential or commercial purposes, and upon which rental payments are due, as intangible personal property. The only exceptions in this definitional section are leasehold or other possessory interests described in Section 4(a), Article VII of the State Constitution or Section 196.199(7), Florida Statutes. Section 4(a), Article VII of

the State Constitution is not applicable to this case. Section 196.199(7), states that property which is originally leased for one hundred years or more, exclusive of renewal options, shall be deemed owned for purposes of this section. Section 196.199(2)(b), Florida Statutes provides that the leasehold or other possessory interests defined in Section 199.023(1)(d) are not to be exempt from taxation but are to be taxed as intangible personal property.

22. Notwithstanding the foregoing provisions of law, Matt Langley Bell, III ("Bell"), who was tax collector for Escambia County at the time, sold tax certificates for the county real property taxes levied in 1982 and 1983 on the improvements erected on properties leased by certain Pensacola Beach leaseholders who refused to pay the illegal tax. Those Pensacola Beach leaseholders filed suit against Bell as tax collector, and others, seeking a declaratory judgment that the leasehold improvements were owned by Escambia County and that the certificates were void and seeking an injunction against the collection of real property taxes levied on their leasehold interests which had been defined by the Florida Legislature as intangible personal property.

23. This Court on January 13, 1986, entered Summary Final Judgment in R. D. Bryan, et al v. Matt Langley Bell, III, Tax Collector for Escambia County, Florida, et al., Case No: 84-1911-CA-01, finding a) the leasehold improvements on Pensacola Beach leased by the plaintiffs in that case were owned by Escambia County, Florida, b) the plaintiffs' leasehold estates, including the buildings and other fixed improvements on the leased premises, had been classified by the

Florida Legislature, as intangible personal property, and c) the tax certificates that had been issued by the tax collector for unpaid real property taxes were issued contrary to existing law, and this Court declared the leasehold improvements were owned by Escambia County, Florida, adjudged the tax certificates that had been issued to be invalid and unenforceable, and permanently enjoined the tax collector from issuing tax certificates for real property taxes assessed against the plaintiffs' leasehold improvements. A copy of this Court's Summary Final Judgment in the foregoing case is attached hereto as Exhibit 2.

24. On appeal to the First District Court of Appeal, Bell v. Bryan, 505 So.2d 690 (Fla. 1st DCA 1987), the appellate court affirmed the Summary Final Judgment, and in response to the appellants' arguments that the fixed improvements erected on the leased properties were not part of the leaseholds, stated:

(A)ppellants 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.

Id. 505 So.2d at 691-692. Bell's petition for a Writ of Certiorari was denied by the Florida Supreme Court. Bell v. Bryan, 513 So.2d 1060 (Fla. 1987).

25. Subsequently, Bell filed suit in this Court against the same Pensacola Beach leaseholders seeking to collect the real property taxes assessed

in 1982 and 1983 on the improvements erected on the leaseholders' leased properties, claiming that the real property taxes were not assessed on the lessees' leasehold estates but on the improvements erected on the leased properties, which improvements were "owned" by the lessees according to Bell. John R. Jones, who was property appraiser for Escambia County at the time, intervened and was made a party to the lawsuit.

26. The late Judge M.C. Blanchard granted the Pensacola Beach leaseholders' motions to dismiss both the initial complaint and the amended complaint filed by Bell as tax collector. On appeal to the First District Court of Appeal, Bell v. Bryan, 519 So.2d 1024 (Fla. 1st DCA 1988), the appellate court affirmed the dismissal of Bell's lawsuit, based on the Court's prior holding in Bell v. Bryan, 505 So.2d 690 (Fla. 1st DCA 1987), review denied 513 So.2d 1060 (Fla. 1987). In its decision, the appellate court affirmed that the property appraiser had no authority to assess the lessees' interests in the leasehold improvements as real property and that the real property taxes the tax collector sought to collect were void.

27. The basic findings and rulings of this Court and the First District Court of Appeal in both Bell v. Bryan, 505 So.2d 690 and Bell v. Bryan, 519 So.2d 1024, was that a) the leasehold improvements on the leased premises were owned by Escambia County, Florida, b) the leasehold interests of the Pensacola Beach leaseholders in the buildings and other fixed improvements erected on Pensacola Beach properties had been defined by the Florida Legislature as

intangible personal property, and c) the leasehold improvements could not be taxed as real property for purposes of county taxation.

28. Contrary to Florida Law and the judicial decisions in Bell v. Bryan, supra, the Property Appraiser has appraised the Plaintiffs' leasehold and possessory interests in the buildings and other fixed improvements erected on the leased properties on Pensacola Beach as real property in 2004, and has certified the appraised value of the buildings and other fixed improvements for purposes of taxation by the county as real property.

29. The Tax Collector has levied real property taxes for 2004 on the appraised value of the buildings and other fixed improvements on Pensacola Beach leased by Plaintiffs.

30. The Florida Legislature, deemed to be cognizant of the judicial interpretation of its legislative acts, has not amended or modified Section 196.199(2)(b), Section 196.199(7), or Section 199.023(1)(d) defining leasehold or other possessory interests in real property owned by the government for a term of less than one hundred years as intangible personal property, and providing for the taxation of such leasehold or other possessory interests as intangible personal property since the First District Court of Appeal's decisions in Bell v. Bryan, supra, holding that the buildings and other fixed improvements erected on the Pensacola Beach properties were owned by Escambia County, Florida, were part of the lessees' leasehold estates and were to be taxed as intangible personal property.

Parties

31. Chris Jones is the County Property Appraiser ("Property Appraiser") for the County of Escambia, State of Florida.

32. Janet Holley is the County Tax Collector ("Tax Collector") for the County of Escambia, State of Florida.

33. The Plaintiffs who are parties to this Complaint are listed on Schedule A. The premises, including the improvements erected thereon, leased by the Plaintiffs are identified on the attached amended Schedule B by parcel and account number.

Significant Provisions in all of the Residential Leases

34. Attached to the Complaint as Exhibit 3 is a copy of the Single Family Residential Lease for federally secured mortgages presently being used by SRIA. SRIA does not presently use a pre-printed standard lease for townhouse projects or condominiums, but each residential, townhouse and condominium lease contains the following provisions:

A. The original term of the leases, exclusive of renewal options, is for a period of less than one hundred years.

B. The leases specify the improvements to be erected on the leased properties.

C. Rental payments to SRIA are due on each of the leases.

D. Each lease provides that title to any building or improvements of a permanent character that shall be erected or placed upon the

leased property by the lessee shall forthwith vest in Escambia County, Florida, subject to the possessory rights granted to the lessee by the terms of the lease. No lessee has the right to remove such fixed and permanent improvements from the leased premises.

E. Lessees are required to repair, replace and maintain the leased property in a good, safe and substantial condition.

F. In the event of damage or destruction of any buildings or improvements on the leased property, the lessee is required to repair or rebuild such building or improvement. Failure to rebuild or replace the building or improvement constitutes a breach of the lease.

G. Upon the expiration or sooner termination of the leases, the lessees are required to surrender possession of the land and improvements in as good state and condition as reasonable use and wear will permit.

35. Attached to this Complaint as exhibits hereto are copies of the following leases:

A. The Residential Lease between SRIA and Ann M. Futral dated January 24, 1957. (Exhibit 4).

B. The Residential Lease used for Villa Sabine between SRIA and The Michael T. Merritt Corporation dated February 20, 1964. (Exhibit 5).

C. The Multi-Family Residential Lease between SRIA and Joseph M. Endry dated March 31, 1981, under the terms of which Lakeside Townhomes was developed (Exhibit 6).

D. The Amended Lease Agreement between SRIA and Johnnie Sue Harper Allen and Allen R. Levin, as trustees, dated February 25, 1982, under the terms of which Tristan Towers Condominium was developed. (Exhibit 7).

E. The Condominium Lease Agreement between SRIA and Little Sabine Investment Group, Inc., dated September 22, 1994, under the terms of which South Harbour Condominium was developed. (Exhibit 8).

Instead of attaching copies of all the Plaintiffs' leases, the foregoing exhibits are attached pursuant to Florida Rules of Civil Procedure 1.130 (a) to show the lease provisions common to the respective residential, townhouse and condominium leases which are material to this Complaint.

COUNT I

Declaratory Judgment

36. Plaintiffs realleges the allegations contained in paragraphs 1 through 35 above as if fully set forth herein.

37. The buildings and other improvements of a permanent character erected on the Pensacola Beach properties leased by SRIA or subleased to the Plaintiffs are owned by Escambia County, Florida.

38. The Plaintiffs' leasehold and possessory interests in the buildings and other improvements of a permanent character erected on the leased properties have been defined by the Florida Legislature for taxation purposes as intangible personal property, and the First District Court of Appeal in Bell v. Bryan, supra, which is legal precedent in the First District of the State of Florida,

has ruled that the fixed improvements are as much a part of the leasehold interests as the realty itself, and that the fixed improvements are to be taxed as intangible personal property.

39. The State of Florida has exclusive jurisdiction to tax intangible personal property. The Property Appraiser has no authority to define property for purposes of taxation and neither the Property Appraiser nor the Tax Collector is authorized to assess and collect county real property taxes on property defined by the Florida Legislature as intangible personal property.

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

41. The action of the Property Appraiser in appraising the Plaintiffs' leasehold and possessory interests in the buildings and other improvements of a permanent character erected on the properties leased by Plaintiffs as real property and the action of the Tax Collector in billing and collecting county real property taxes on the appraised value of these fixed improvements are illegal, null and void.

42. Because of the acts of the Defendants alleged herein, Plaintiffs are presently in doubt as to their rights and liabilities and are entitled to have such doubts resolved through this action.

43. Plaintiffs are obligated to pay their undersigned attorneys a reasonable fee for their services in this litigation.

WHEREFORE, Plaintiffs request that this Court enter judgment for the Plaintiffs declaring that:

- (a) Plaintiffs' leasehold interests in the properties located on Santa Rosa Island, Escambia County, Florida, have been defined by the Florida Legislature and by law as intangible personal property for purposes of taxation,
- (b) the buildings and improvements of a permanent character erected on the leased properties are a part of the Plaintiffs' leasehold estates,
- (c) the leasehold improvements are owned by Escambia County, Florida,
- (d) the Property Appraiser's appraisal of the Plaintiffs' leasehold and possessory interests in the buildings and other improvements of a permanent character erected on the leased properties as real property, and the Property Appraiser's certification of said improvements as being subject to County real property taxes were and are improper, illegal and void acts, and

(e) the Tax Collector's levying and collecting real property taxes on the leasehold improvements were and are improper, illegal and void acts,

and ordering any real property taxes paid on the leasehold improvements to be refunded.

Plaintiffs further pray for an award of their attorneys fees pursuant to Section 57.105, Florida Statutes, and costs and expenses incurred in this lawsuit.

COUNT II

Injunction

44. Plaintiffs reallege the allegations contained in paragraphs 1 through 35 and 37 through 43 above as if fully set forth herein.

45. As alleged hereinabove, the Property Appraiser has no authority to appraise as real property those properties which have been defined by the Florida Legislature as intangible personal property, and the Tax Collector has no authority to collect real property taxes on properties which have been defined by the Florida Legislature as intangible personal property. Such actions by the Property Appraiser and Tax Collector are contrary to law and are improper, illegal and void.

46. Unless enjoined, the Property Appraiser will continue to illegally appraise Plaintiffs' leasehold and possessory interests in the buildings and other improvements of a permanent character erected on their leased Pensacola Beach properties as real property and certify the improvements for taxation as real

property and the Tax Collector will continue to issue real property tax bills and attempt to collect real property taxes from Plaintiffs on the appraised value of the buildings and other improvements of a permanent character erected on their Pensacola Beach leased properties.

47. Unless the Property Appraiser is restrained and enjoined from appraising the buildings and other improvements of a permanent character on Plaintiffs' leased properties on Pensacola Beach as real property, and the Tax Collector is restrained and enjoined from collecting county real property taxes on the appraised value of these fixed improvements, Plaintiffs will be irreparably harmed for which they have no adequate remedy at law.

WHEREFORE, Plaintiffs pray that this Court enter judgment for the Plaintiffs enjoining the Property Appraiser from appraising Plaintiffs' leasehold and possessory interests in the Pensacola Beach properties leased through SRIA including the buildings and other improvements of a permanent character erected on the leased properties, as real property, and from certifying said properties as being subject to county real property taxes, and enjoining the Tax Collector from levying and collecting county real property taxes on said properties.

Plaintiffs further pray for an award of their attorneys fees pursuant to Section 57.105, Florida Statutes, and costs and expenses incurred in this lawsuit.

COUNT III

Injunction

48. Plaintiffs reallege the allegations contained in paragraphs 1 through 35, 37 through 43 and 45 through 47 above as if fully set forth herein.

49. As alleged above, the Property Appraiser has appraised Plaintiffs' leasehold improvements as real property and the Tax Collector has levied real property taxes on Plaintiffs' leasehold improvements.

50. The Tax Collector has taken the position that these real property taxes create a lien on Plaintiffs' leasehold improvements and that the Tax Collector is authorized to sell tax certificates to collect the real property taxes that the Tax Collector alleges are owed on the Plaintiffs' leasehold improvements.

51. Section 196.199(a), Florida Statutes (2004), provides that any and all taxes assessed on leasehold interests in governmental property, with certain exceptions inapplicable to this case, shall not become a lien on the same, or the property itself, but shall constitute a debt due and shall be recoverable by legal action or by the issuance of tax executions that shall become a lien upon any other property in any county of this State of the taxpayer who owes said tax.

52. Section 197.432(9), Florida Statutes (2004), prohibits the creation of a lien on property owned by the government which has become subject to taxation due to its lease to a nongovernmental lessee. That section reads, in part, as follows:

"A certificate may not be sold on, nor is any lien created in, property owned by any governmental unit the property of which has become subject to taxation due to lease of property to a nongovernmental lessee. The delinquent taxes shall be enforced and collected in the manner provided in section 196.199 (8)."

53. Plaintiffs' improvements on which the Tax Collector has levied real property taxes are part of Plaintiffs' respective leasehold estates on which rental payments are due under the terms of the leases that create the leasehold estates.

54. Plaintiffs' leaseholds fall within the definition of the leaseholds described in Section 199.023 (1)(d), Florida Statutes (2004), in that they are a) leases of governmentally owned properties, b) the original terms of which are less than 100 years, exclusive of renewal options, c) the leaseholds are used predominately for residential purposes, and d) rental payments are due under the terms of the leases pursuant to which they have possessory interests in said properties.

55. Section 196.199 (8)(a), Florida Statutes (2004), provides an exclusive procedure for the collection of taxes assessed on all private leaseholds of governmentally owned real property on which rental payments are due under the terms of the lease agreement.

56. The real property taxes assessed on Plaintiffs' leasehold improvements by the Tax Collector do not create a lien on Plaintiffs' respective

leasehold estates or the improvements which are part of their leasehold estates, and the Tax Collector is not authorized to issue tax certificates to collect the real property taxes assessed against Plaintiffs' leasehold improvements.

57. Unless enjoined, the Tax Collector will sell tax certificates to collect the allegedly delinquent 2004 and future real property taxes levied on Plaintiffs' leasehold improvements.

58. Unless the Tax Collector is restrained and enjoined from selling tax certificates to collect the real property taxes levied on Plaintiffs' leasehold improvements, Plaintiffs will be irreparably harmed for which they have no adequate remedy at law.

WHEREFORE, Plaintiffs request that this Court enter judgment for the Plaintiffs declaring that: a) real property taxes levied by the Tax Collector for Escambia County on the improvements erected on the properties on Pensacola Beach leased by the Plaintiffs do not and shall not create liens on Plaintiffs' leasehold estates, including their leasehold improvements, or on the properties leased by the Plaintiffs from the Santa Rosa Island Authority as an agency of Escambia County, Florida, and b) Section 196.199 (8)(a), Florida Statutes (2004), establishes the exclusive procedure for collection of taxes levied on all private leaseholds of governmentally owned real property on which rental payments are due under the terms of the lease agreement, and enjoining the Tax Collector from selling tax certificates to collect the real property taxes levied on Plaintiffs' leasehold improvements.

Plaintiffs further pray for an award of their attorneys fees pursuant to section 57.105, Florida Statutes, and costs and expenses incurred in this lawsuit.

COUNT IV

Estoppel

59. Plaintiffs reallege the allegations contained in paragraphs 1 through 35, 37 through 43 and 45 through 58 above as if fully set forth herein.

STARE DECISIS

60. The doctrine of stare decisis is applicable to this case and requires that the appellate court's prior decisions holding that the Pensacola Beach lessees' leasehold improvements were owned by Escambia County, Florida, and the lessees' interests in the improvements erected on their leased properties are to be taxed as intangible personal property and not as real property are not to be disregarded.

A. In Bell v. Bryan, 505 So.2d 690 (Fla. 1st DCA 1987), rev. den. 513 So.2d 1060 (Fla. 1987), the First District Court of Appeal ruled that the improvements erected on the Pensacola Beach lessees' leased properties are as much a part of their leasehold estates as the real property itself, and affirmed the trial court's findings that the improvements should have been assessed at the intangible personal property rate instead of at the real property rate.

B. In Bell v. Bryan, 519 So.2d 1024 (Fla. 1st DCA 1988), the First District Court of Appeal affirmed its previous decision in Bell v. Bryan, 505 So.2d 690 (Fla. 1st DCA 1987), rev. den. 513 So.2d 1060 (Fla. 1987), and again

held that the property appraiser had no authority to appraise the Pensacola Beach lessees' interests in the leasehold improvements as real property and that the real property taxes the tax collector sought to collect were void.

C. There has been no change in the law that was existing as of the date that the First District Court of Appeal rendered its decisions in the two aforementioned cases of Bell v. Bryan, supra.

RES JUDICATA

61. Defendants are barred by the doctrine of res judicata from appraising the Plaintiffs' leasehold improvements as real property and from collecting real property taxes on such improvements from Plaintiffs.

62. There is an (a) identity of the thing sued for; (b) identity of cause of action; (c) identity of persons and parties to actions; and (d) identity of quality or capacity of person for or against whom claim is made in this case and the cases of R.D. Bryan, et al v Matt Langley Bell, III, Tax Collector for Escambia County, Florida, et al, Case No: 84-1911, in the Circuit Court in and for Escambia County, Florida, which was appealed and reported as Bell v. Bryan, 505 So.2d 690 (Fla. 1st DCA 1987), rev. den. 513 So.2d 1060 (Fla. 1987), and Matt Langley Bell, III, as Tax Collector of Escambia County, Florida v. Don Bryan, et al., Case No: 86-678, in the Circuit Court in and for Escambia County, Florida, which case was appealed and reported as Bell v. Bryan, 519 So.2d 1024 (Fla. 1st DCA 1988).

63. The parties are identical:

A. The plaintiffs in Bell v. Bryan, 505 So.2d 690, were Don Bryan, Rupert D. Bryan and Nellie B. Bryan, W.O. Wedel and Merrell Fairchild. These same individuals were the defendants in Bell v. Bryan, 519 So.2d 1024.

B. The plaintiffs in Bell v. Bryan, 505 So.2d 690, and the defendants in Bell v. Bryan, 519 So.2d 1024, are in privity with the Plaintiffs in this case and/or were virtual representatives of the Plaintiffs in this case.

C. Matt Langley Bell, III, in his capacity as tax collector of Escambia County, Florida, was a defendant in Bell v. Bryan, 505 So.2d 690, and the plaintiff in Bell v. Bryan, 519 So.2d 1024. John R. Jones, in his capacity as property appraiser of Escambia County, Florida, intervened and was made a party to Bell v. Bryan, 519 So.2d 1024.

D. The Defendants in this case are parties to this litigation in their respective capacities as Property Appraiser and Tax Collector for Escambia County, Florida.

64. Plaintiffs Marion B. Bryan, Nellie Bomar Bryan, Walter D. Bryan and Rupert D. Bryan, Jr., as Trustees, Walter D. Bryan, W.O. Wedel and Merrell Fairchild are successors to or the same persons who were parties in Bell v. Bryan, supra:

A. Marian B. Bryan is the former wife of Don Bryan and is the leaseholder of Lot 69, Block B, Villa Sabine, including the leasehold improvements erected thereon (Account #17-0629-000). Nellie Bomar Bryan is the widow of Ruepert D. Bryan and together with Walter D. Bryan and Ruepert D. Bryan, Jr., as Trustees, is the leaseholder of Lot 42, Block B, Villa Sabine, including the leasehold improvements erected thereon (Account #17-0602-000). Walter D. Bryan is the son of Ruepert D. Bryan, deceased, and is the leaseholder of Lot 54, Block B, Villa Sabine, including the leasehold improvements erected thereon (Account #17-0614-000). W. O. Wedel is the son of Dorothy H. Thayer, who is now deceased, and is the leaseholder of Lots 19 and 20, Block 9, Villa Segunda (Account #17-0831-500), Lots 7 and 8, Block 44, Villa Segunda (Account #17-1154-500), Lots 13 and 14, Block 44, Villa Segunda (Account #17-1173-500, and Lots 7 and 8, Block 43, Villa Segunda (Account #17-1170-500), including the leasehold improvements erected thereon. Merrell Fairchild is the leaseholder of Lots 5 and 6, Block 43, Villa Segunda, including the leasehold improvements erected thereon (Account #17-1153-500).

B. The leasehold improvements erected on the above identified leaseholds which the Property Appraiser has appraised as real property for 2004 and on which the Tax Collector seeks to collect

2004 real property taxes are the same leasehold improvements that the former property appraiser and tax collector appraised as real property and sought to collect real property taxes on in Bell v. Bryan, supra.

65. There is an identity of the thing sued for. In both the Bell v. Bryan, supra, cases and in this case, the lessees on Pensacola Beach were seeking a declaration by the Court that the Property Appraiser and Tax Collector were not authorized to appraise the leasehold improvements on Pensacola Beach as real property and to collect real property taxes on the appraised value of such improvements because the Florida Legislature had classified the leasehold improvements as intangible personal property, and the Property Appraiser and Tax Collector were seeking to appraise and tax the leasehold improvements as real property based, in part, on their argument that the lessees owned the leasehold improvements.

66. The issues raised in this case are identical to the issues raised in Bell v. Bryan, supra, to-wit:

- a) Whether the leasehold improvements are part of the leasehold?
- b) Whether Escambia County or the lessees own the leasehold improvements?
- c) Whether the leasehold improvements are to be taxed as real property or as intangible personal property?

- d) Does the property appraiser have any authority to appraise the leasehold improvements as real property?
- e) Does the tax collector have any authority to collect real property taxes on the appraised value of the leasehold improvements?

67. The First District Court of Appeal has already determined in Bell v. Bryan, supra, which involved the same persons and parties and the same causes of action, that the Plaintiffs' leasehold improvements have been defined by the Florida Legislature as intangible personal property and the Property Appraiser and Tax Collector have no authority to appraise the leasehold improvements as real property or to collect real property taxes on the appraised value of the leasehold improvements.

68. Plaintiffs Marian B. Bryan, Nellie Bomar Bryan, Walter D. Bryan and Rupert D. Bryan, Jr., as Trustees, Walter D. Bryan, W.O. Wedel and Merrell Fairchild, as successors to or the same persons who were parties in Bell v. Bryan, supra, and said Plaintiffs together with the remaining Plaintiffs being in privity with or being virtually represented by the lessees in Bell v. Bryan, supra, are entitled to judgment barring the Defendants from appraising their leasehold improvements as real property and from collecting real property taxes on such improvements.

COLLATERAL ESTOPPEL

69. Defendants are collaterally estopped from appraising Plaintiffs' leasehold improvements as real property and from collecting real property taxes on such improvements.

A. In Bell v. Bryan, 505 So.2d 690 (Fla. 1st DCA 1987), rev. den. 513 So.2d 1060 (Fla. 1987), and Bell v. Bryan, 519 So.2d 1024 (Fla. 1st DCA 1988), the identical same issues were litigated that the Plaintiffs are compelled to litigate in this action, to wit:

(1) Whether the Pensacola Beach lessees' leasehold interests in the improvements erected on their leased properties have been defined or classified by the Florida Legislature as intangible personal property.

(2) Whether Escambia County or the lessees own the improvements erected on the leased properties.

(3) Whether the improvements erected on the leased properties are part of the lessees' leasehold estates.

(4) Whether the property appraiser had any authority to appraise the lessees' interests in the leasehold improvements as real property.

(5) Whether the real property taxes assessed against the lessees' leasehold improvements and which the tax collector sought to collect were void.

(6) Whether the tax collector should be enjoined from collecting real property taxes on lessees' leasehold improvements.

B. In Bell v. Bryan, supra, the plaintiffs in the case below were Pensacola Beach lessees who had leasehold interests in the improvements erected on their leased properties by virtue of leases they, or their predecessor lessees, entered into with SRIA.

C. There is a mutuality of parties in this lawsuit in that the property appraiser and the tax collector for Escambia County, Florida, were parties in Bell v. Bryan, 519 So.2d 1024 (Fla. 1st DCA 1988), and the Pensacola Beach lessees who were parties in Bell v. Bryan, supra, are in privity with or were virtual representatives of the Plaintiffs in this lawsuit. The interests of the Pensacola Beach lessees in Bell v. Bryan, supra, are identical to the interests of the Plaintiffs in this lawsuit - - to prevent the property appraiser from appraising their leasehold improvements as real property and to prevent the tax collector from collecting the void real property taxes.

EQUITABLE ESTOPPEL

70. Defendants are equitably estopped from appraising Plaintiffs' leasehold or possessory interests in the improvements as real property and from collecting real property taxes on the appraised value of such leasehold improvements.

A. Shortly after the First District Court of Appeal's decision in Bell v. Bryan, 519 So.2d 1024 (Fla. 1st DCA 1988), Matt Langley Bell, III, the former tax collector for Escambia County, Florida, publicly stated that although Bell v. Bryan, supra, was not a class action lawsuit, that no further actions would be taken to

collect real property taxes on the improvements erected by leaseholders on their leased properties on Pensacola Beach. After the First District Court of Appeal's decision in 1988 in Bell v. Bryan, *supra*, and until 2004, neither the Property Appraiser nor his predecessor in office, have appraised the Pensacola Beach lessees' leasehold or possessory interests in the improvements erected on their leased properties as real property, and neither the Tax Collector, nor her predecessor in office, have sought to levy or collect real property taxes on said fixed improvements, until 2004.

B. The first official notice to the Plaintiffs that the Property Appraiser had decided to appraise Plaintiffs' leasehold and possessory interests in the improvements erected on their leased properties in 2004 was the TRIM notice mailed by the Property Appraiser to the Plaintiffs on or about August 16, 2004.

C. Plaintiffs have relied on the appellate court's prior rulings that only the Florida Legislature has the authority to define or classify property for purposes of taxation, the former tax collector's public statements that he would not collect real property taxes on the Pensacola Beach lessees' leasehold or possessory interests in the improvements erected on their leased properties based on the First District Court of Appeal's decision in Bell v. Bryan, *supra*, and the Property Appraiser's and Tax Collector's, and their respective predecessors in office, adherence for a period of more than fifteen years to the representations that the Pensacola Beach lessees' leasehold and possessory interests in the leasehold improvements would not be taxed as real property.

D. Plaintiffs have relied on the representations and actions of the Property Appraiser and Tax Collector, and their respective predecessors in office, to their detriment.

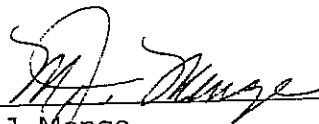
E. In reliance on the representations and actions of the Property Appraiser and Tax Collector, and their respective predecessors in office, Plaintiffs have made various decisions which will substantially adversely affect them if the Property Appraiser and Tax Collector are not enjoined from appraising their leasehold or possessory interests in the improvements erected on their leased properties as real property and from collecting real property taxes on the appraised value of said improvements.

WHEREFORE, Plaintiffs pray that the Defendants be estopped from appraising Plaintiffs' leasehold improvements as real property and from collecting real property taxes on the basis of the appraised value of said improvements, and Plaintiffs further pray for the entry of an order as requested hereinabove declaring the actions of the Property Appraiser and Tax Collector to be improper, illegal, and void, and for the entry of an order as requested hereinabove enjoining the Defendants from appraising the Plaintiffs' leasehold improvements as real property and from collecting real property taxes on said improvements.

Plaintiffs further pray for an award of their attorneys fees pursuant to Section 57.105, Florida Statutes, and costs and expenses incurred in this lawsuit.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that true and correct copy of the foregoing First Amended Complaint has been furnished to Elliott Messer and Thomas M. Findley, of Messer, Caparello & Self, P.A., 215 S. Monroe Street, Suite 701, Tallahassee, FL. 32302, by U.S. mail this 9th day of November, 2005.



M.J. Menge
Bar No: 54275
Danny L. Kepner
Bar No: 146821
Shell, Fleming, Davis & Menge, P.A.
226 South Palafox Street, 9th Floor
Pensacola, Florida 32502
Telephone 850-434-2411
Attorneys for Plaintiffs