

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  
WEIDLICIL, 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. Marhew and Angela Gardner have a single family residence located on their leasehold in Navarre Beach. The Wards, Colcys, 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 (hercafter "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).

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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*, 64 So.2d 117 (Fla. 3d DCA

1994) (citing *Collins Investment Co. v. Metropolitan Dade County*, 64 So.2d 306, 308

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 Mitos v.*

*Reming 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.<sup>1</sup>

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.

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<sup>1</sup> 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 Laurus & 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).<sup>2</sup> 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:

<sup>2</sup> 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.<sup>3</sup>

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).

<sup>3</sup> 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 18<sup>th</sup> day of March 2004.

  
Paul A. Rasmussen, Circuit Judge

Copies to:

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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.