

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.

**REPLY TO AFFIRMATIVE DEFENSES AND
MOTION TO STRIKE CERTAIN AFFIRMATIVE DEFENSES**

Plaintiffs reply to the Affirmative Defenses alleged by Defendants and say:

First Affirmative Defense

Denied.

Second Affirmative Defense

Denied.

Third Affirmative Defense

Denied that Plaintiffs have any obligation to allege or prove the payment of any taxes as asserted by Defendants. Plaintiffs deny the remainder of the

Third Affirmative Defense.

Fourth Affirmative Defense

Denied that the property interests at issue constitute real property interests or that the Plaintiffs' possessory interests in the improvements

constructed thereon constitute real property interests. Plaintiffs admit they rely on the Florida Legislature's definition of intangible personal property in §199.023, Fla. Stat. (2004), to include all leasehold or other possessory interests in real property owned by any political subdivision of the state, with certain exceptions and qualifications, and on the Florida Legislature's directive found in §196.199(2)(b), Fla. Stat. (2004), that such leasehold or other interest shall be taxed only as intangible personal property as part of the basis for their claim that their leasehold or possessory interests in the improvements may be assessed only as intangible personal property. Plaintiffs deny the remainder of the Fourth Affirmative Defense.

Fifth Affirmative Defense

As stated in their reply to the Fourth Affirmative Defense, Plaintiffs admit they rely in part on §196.199(2)(b), Fla. Stat. (2004) and on §199.023, Fla. Stat. (2004) for their claim that their leasehold improvements are to be taxed as intangible personal property. Plaintiffs deny the remainder of the Fifth Affirmative Defense.

Sixth Affirmative Defense

As stated in their reply to the Fourth Affirmative Defense, Plaintiffs admit they rely in part on §196.199(2)(b), Fla. Stat. (2004) in their claim that their leasehold improvements should be assessed as intangible personal property. Plaintiffs deny the remainder of the Sixth Affirmative Defense.

Seventh Affirmative Defense

Plaintiffs have alleged that §196.199, Fla. Stat. (2004), directs that their possessory interests in the leasehold improvements shall be taxed only as intangible personal property. Plaintiffs deny the remainder of the Seventh Affirmative Defense.

Eighth Affirmative Defense

Plaintiffs have alleged that §196.199, Fla. Stat. (2004), directs that their possessory interests in the leasehold improvements shall be taxed only as intangible personal property. Plaintiffs deny the remainder of the Eighth Affirmative Defense.

Ninth Affirmative Defense

Denied.

Tenth Affirmative Defense

Plaintiffs admit that the property appraiser at the time was not a party in the case of Bell v. Bryan, 505 So.2d 690 (Fla. 1st DCA 1987), rev. den. 513 So.2d 1060 (Fla. 1987), but reallege that John R. Jones, who was property appraiser for Escambia County at the time, intervened and was made a party plaintiff in the case of Bell v. Bryan, 519 So.2d 1024 (Fla. 1st DCA 1988). Plaintiffs deny the remainder of the Tenth Affirmative Defense.

Eleventh Affirmative Defense

Plaintiffs admit they have alleged theories based on stare decisis. Plaintiffs deny the remainder of the Eleventh Affirmative Defense.

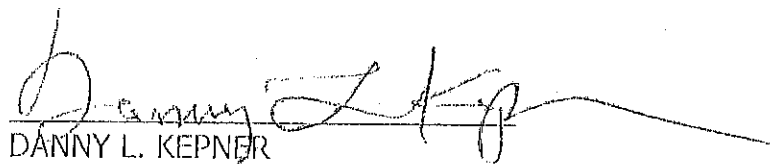
MOTION TO STRIKE CERTAIN AFFIRMATIVE DEFENSES

Plaintiffs move to strike Defendants' Fourth Affirmative Defense, Fifth Affirmative Defense, Sixth Affirmative Defense, Seventh Affirmative Defense, and Eighth Affirmative Defense on the grounds that the allegations contained in these Affirmative Defenses constitute challenges to the constitutionality of the Florida Statutes cited therein and the Defendants are ministerial public officers who have no standing to challenge the constitutionality of statutes defining property for purposes of taxation or how such properties should be taxed.

WHEREFORE, Plaintiffs reply to the Affirmative Defenses asserted by Defendants, move to strike certain Affirmative Defenses, and renew their prayer for the relief contained in their Complaint.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Reply to Affirmative Defenses and Motion to Strike Certain Affirmative Defenses 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 14 day of January, 2005.



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