IN THE DISTRICT COURT OF APPEAL OF FLORIDA

SECOND DISTRICT

OLIVER LOWE, As The Duly Elected Property Appraiser Of Charlotte County, Florida, and The FLORIDA DEPARTMENT OF REVENUE,

Appellants,

vs.

FLORIDA HOME JUICE COMPANY, An Illinois Corporation,

Appellee.
_____/

CASE NO. **84-2587**

Filed in The Supreme Court of Florida Case No. **66,916**

AMICUS CURIAE BRIEF

FLORIDA CITRUS MUTUAL

Mygnon C. Evans
Attorney for
FLORIDA CITRUS MUTUAL
Post Office Box **89**
Lakeland, FL **33802**
(813) 682-1111

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PRELIMINARY STATEMENT

Amicus Florida Citrus Mutual adopts by reference the Preliminary Statement provided in Appellant's Initial Brief.

STATEMENT OF THE CASE AND FACTS

Amicus Florida Citrus Mutual adopts by reference the Statement of the Case and Facts provided in Appellee's Answer to Appellant Oliver Lowe.

Amicus draws particular attention to certain facts set forth in the Statement of the Case and Facts provided in Appellant's Initial Brief, to wit, that requests for private financial information were made in 1983 to all known citrus growers in Charlotte County; that 121 of the 153 citrus growers from whom information was requested provided said information; and that Appellee owns and operates an "excellent", well-maintained citrus grove in Charlotte County.

ISSUES PRESENTED

I. THE DEMAND BY APPELLANT PROPERTY APPRAISER FOR PRIVATE FINANCIAL RECORDS WAS, AS A THRESHOLD MATTER, AN ACT BEYOND THE SCOPE OF HIS AUTHORITY FOR NON-COMPLIANCE WITH THE DEPARTMENT OF REVENUE RULE ON THIS MATTER.

11. THE DEMAND BY THE APPELLANT PROPERTY APPRAISER WAS NOT A VALID EXERCISE OF STATUTORY AUTHORITY BECAUSE THE FINANCIAL RECORDS DEMANDED WERE NOT, AS A QUESTION OF FACT, NECESSARY TO DETERMINE THE CLASSIFICATION OR THE VALUE OF APPELLEE'S NONHOMESTEAD PROPERTY.

ARGUMENT

I. THE DEMAND BY APPELLANT PROPERTY APPRAISER FOR PRIVATE FINANCIAL RECORDS WAS, AS A THRESHOLD MATTER, AN ACT BEYOND THE SCOPE OF HIS AUTHORITY FOR NON-COMPLIANCE WITH THE DEPARTMENT OF REVENUE RULE ON THIS MATTER.

Section 195.027(3), Florida Statutes (1983), mandates the adoption of rules to provide procedures for certain official parties (the Property Appraiser, the Department of Revenue and the Auditor General) to obtain access to financial records relating to nonhomestead property.

Pursuant to this statutory provision, the Florida Department of Revenue promulgated rule 12D-1.05, Florida Administrative Code, entitled, "Access to Financial Records". This rule provides in pertinent part:

> "(a) Access to a taxpayer's records shall be provided only where it is determined that such records are necessary to determine both the classification and value of the taxable nonhomestead property.
>
> (b This section shall apply to all real and personal property physically located within the State, and within the county in question on January 1 of the year for which inspection is sought.
>
> (c * * * * * * * * *
>
> (d In the event the taxpayer shall refuse, after written demand, to make production of the books and records requested, the requesting agency shall have the right to proceed with an original action in the Circuit Court for an application to the court for a subpoena duces tecum and production of the records in question."

The rule under which Appellant property appraiser was proceeding in seeking a subpoena clearly requires that the records demanded must be necessary to a determination of both classification and value. In the case at bar, there is no claim that the records were necessary to determine classification. Indeed, Appellant acknowledges in his brief that Appellee is one of the largest citrus growers in Charlotte County (R. - 110). Further, Appellant's expert witness testified as to the good maintenance and quality production of Appellee's groves (R. - 78, 82).

The classification of Appellee's nonhomestead property as agricultural is not in dispute; nor has Appellant property appraiser even suggested that the financial records demanded are needed to determine the propriety of this classification. It would seem, then, that the demand for financial records made by Appellant property appraiser is, on its face, invalid.

11. THE DEMAND BY THE APPELLANT PROPERTY APPRAISER WAS NOT A VALID EXERCISE OF STATUTORY AUTHORITY BECAUSE THE FINANCIAL RECORDS DEMANDED WERE NOT, AS A QUESTION OF FACT, NECESSARY TO DETERMINE THE CLASSIFICATION OR THE VALUE OF APPELLEE'S NONHOMESTEAD PROPERTY.

Section 195.027(3), Florida Statutes (1983), provides as follows:

> "(3) The rules and regulations shall provide procedures whereby the property appraiser, the Department of Revenue, and the Auditor General shall be able to obtain access, where necessary, to financial records relating to nonhomestead property, which records are required to make a determination of the proper assessment as to the particular property in question. Access to a taxpayer's records shall be provided only in those instances in which it is determined that such records are necessary to determine either the classification or the value of the taxable nonhomestead property. (emphasis added) Access shall be provided only to those records which pertain to the property physically located in the taxing county as of January 1 of each year and to the income from such property generated in the taxing county for the year in which a proper assessment is made. All records produced by the taxpayer under this subsection shall be deemed to be confidential in the hands of the property appraiser, the department of the tax collector, and the Auditor General and shall not be divulged to any person, firm, or corporation, except upon court order or order of an administrative body having quasi-judicial powers in ad valorem tax matters."

It was under the authority granted in this statutory provision that the Charlotte County Property Appraiser sought access to private financial records from all known citrus growers in Charlotte County (R. -

17-28, 71, 93). It was pursuant to the authority of this statute that Appellant property appraiser sought a subpoena duces tecum when Appellee did not comply with the "request" for the production of private records.

It should be noted at the outset that the only standard by which the propriety or impropriety of the property appraiser's "request" can be measured is the standard of necessity. Were the records necessary to make a proper assessment? Necessity is the standard explicitly provided by statute.

It appears that, where it is established that the records are necessary to make a proper determination, failure to provide the records would properly result, pursuant to 12D-1.05(1)(d), Florida Administrative Code, in issuance of a subpoena duces tecum. However, the fact that a subpoena may, under proper circumstances, be issued, does not, as Appellants seem to infer, bequeath to the property appraiser all the broad powers of pre-trial discovery. Apparently, it is because of this authorization, by administrative rule, of the subpoena power that counsel for Appellant Property Appraiser and Appellant Department of Revenue confuse the broad scope of pre-trial discovery methods -- and its standard of relevance -- with the statutorily-mandated and far more limited standard of necessity applied to pre-assessment records production.

To be sure, Appellants cite to cases involving production of financial records demanded by property appraisers in which relevance is the standard, e.g. Homer v. Connecticut General Life Insurance Co., 213 So.2d 490 (3rd DCA 1968) and Food Fair, Inc. v. Board of Assessment Review of Niskayuna, 435 N.Y.S.2d 378 (App. Div. 1981). They overlook the critical distinction, however, that each of the cases involved litigation over the amount of the assessment; standard discovery techniques probative of the accuracy of the valuation were the mode; subpoenas were grounded in rules of civil procedure applicable to all litigation and not in a statutorily authorized but very limited pre-assessment privilege.

In spite of the confusing introduction of such post-assessment cases into arguments for the case at bar, it remains clear that Appellants' request for a subpoena is grounded in S195.027 Florida Statutes and not in the Florida Rules of Civil Procedure. Consequently, the standard here must remain necessity, not mere relevance. See Whitman v. Bystrom, 10 FLW 353, (February 15, 1985 3d DCA).

If necessity is the criteria for determining the propriety or impropriety of the demand, then, this case turns on the question of whether Appellee's financial records were necessary to a proper determination of

value. That question leads us into three closely interrelated areas of inquiry:

(1) The generic meaning of the term "necessary";

(2) The construction of the term within the context of S195.027, Florida Statutes;

(3) Designation of the person or institution to make the determination of necessity.

Turning first to the definition, we note that The American Heritage Dictionary of the English Language, (Boston: Houghton Mifflin Company, 1970), defines "necessary" as follows:

> "Needed for the continuing existence or functioning of something; essential; indispensable. Needed to achieve a certain result or effect; requisite. Following unavoidable from conditions, circumstances or premises. Required by obligation, compulsion or convention".

Each of these alternative definitions carries a significantly stricter denotation than that suggested by Appellant's brief in which we are asked to believe that "necessary", when applied to taxation, is interchangable with "helpful and appropriate". However a review of Appellant's reference to Black's Law Dictionary (5th Edition) reveals that the loose definition cited therein has specific reference only to §212 and §162(a), Internal Revenue Code, and, hence, is without relevance to the construction of this Florida Statute dealing with forced records-production.

From this background of varied definitions of the word "necessary", we turn to consideration of its meaning within the context of **S195.027 (3),** Florida Statutes. We note, as Appellant does, that this section must be read within the context of §193.011, Florida Statutes, which lists eight factors that property appraisers are required to consider in arriving at just value.

Similarly, the statutory provision must be considered within the context of **S195.032,** Florida Statutes, which provides as follows:

> "Establishment of standards of value. In furtherance of the requirement set out in s. **195.002,** the Department of Revenue shall establish and promulgate standard measures of value not inconsistent with those standards provided by law, to be used by property appraisers in all counties, including taxing districts, to aid and assist them in arriving at assessments of all property. The standard measures of value shall provide guidelines for the valuation of property and methods for property appraisers to employ in arriving at the just valuation of particular types of property consistent with **ss. 193.011** and **193.461.** ~~The~~ standard measures of value shall assist the property appraiser in the valuation of property and be deemed prima facie correct, but shall not be deemed to establish the just value of any property. However, the presumption of correctness accorded an assessment made by a property appraiser shall not be impugned merely because the standard measures of value do not establish the just value of any property." (emphasis added)

Pursuant to the latter statutory provision, the Department of Revenue has adopted guidelines for the

valuation of citrus groves, see Rule 12D-1.51, F.A.C. It should be noted that not only are the valuations arrived at via these guidelines presumed to be correct, pursuant to explicit statutory provision, but a property appraiser seeking to apply a different appraisal method for assessing agricultural property must prove by a preponderance of the evidence that his appraisal method is superior to the state guidelines. St. Joe Paper Co.v. Conrad, 333 So.2d 527 (1st DCA 1976).

Against this backdrop, one must ask, when and under what circumstances would private financial records become a necessary prerequisite to determining just valuation? It seems obvious at first glance that, in view of the state guidelines, any agricultural land devoted to a crop that is the subject of state guidelines could be appropriately assessed with those guidelines alone. Such is usually, but not always, the case. In some instances, the guidelines are not sufficient.

For instance, the First District Court of Appeal found in St. Joe Paper Co. v. James, 429 So.2d 705 (1st DCA 1983) that a particular element of the state guidelines for establihsing just value of timberlands was not a proper method for use by the property appraiser. In that case, the court held that the

property appraiser may not use "obsolete, clearly erroneous" values in applying the formula.

Appellant argues, however, for a very broad construction of "necessary", a construction so broad that the appraiser's desire to establish county-wide averages to replace state-wide averages (R. - 55-58) makes participation in his survey "necessary" to establish just valuation. Can this be a proper interpretation of the statute at hand? We think not, particularly when reference is made to the language of the statute itself: "which records are required to make a determination of the proper assessment as to the particular property in question . . ."

Legislative intent is the polestar of statutory construction. In the statute under scrutiny, the Florida Legislature evinced a strong respect for the private nature of the financial records of citizen-taxpayers. As the First District Court of Appeal noted in Whitman, supra, the confidential nature of individual financial affairs is well recognized. Id. Footnote 4. See also Fryd Construction Corp. v. Freeman, 191 So.2d 487 (3d DCA 1966). To suggest that the same legislature that displayed considerable concern for the confidentiality of these records and recognized that the power to require their production represents a diminution of the historic right to privacy would, at the same time, authorize the

property appraiser to subpoena them solely for the purpose of conducting a county-wide survey simply defies rationality. Such a statutory construction is so inherently contradictory, so irrational, that it ignores credibility.

The contention of Intervenor Department of Revenue that the Appellee's financial records are required because of the uniqueness of the property can be readily discarded. The Appellant, by his own admission, demanded the same information of all known citrus growers in Charlotte County. The last-minute claim that the demand upon the Appellee was grounded upon the uniqueness of its grove appears, on its face, to be a convenient afterthought.

The standard rules of statutory construction require a narrow reading of 5195.027 for two reasons. In the absence of a clear legislative intent to the contrary, tax laws are given a strict construction for the benefit of the taxpayer and to the restriction of the taxing authority. Similarly, statutes in derogation of individual rights are also accorded strict construction. (See *Am* Jur 2d, "Statutes" §398; Fla Jur 2d, "Statutes" §191, and Fla Jur 2d, "Taxation" §10-12).

Finally, we turn to the question of authority for determining the necessity, or lack thereof, of private financial records for determining valuation. What

public office or institution is vested with jurisdiction to make this determination? The statute is silent on this particular issue.

Appellant and Intervenor argue that it is the property appraiser who must ascertain whether the financial records are necessary; they claim that such determination in the hands of the property appraiser is a matter of discretion. They cite to several cases, for instance, State, ex rel Glynn v. McNayr, 133 So.2d 312 (Fla. 1961), Schleman v. Connecticut General Life Ins. Co., 9 So.2d 197 (Fla. 1942), Markham v. Friedland, 245 So.2d 645 at 651 (4th DCA 1971), for the principle that the property appraiser enjoys wide discretion and a strong presumption of correctness; absent a showing of fraud, illegality or clear abuse of discretion, Appellant and Intervenor contend, the decision of the property appraiser should not be overturned.

However, each of these cases speaks to the property appraiser's discretion in establishing property value. Certainly wide leeway must be granted the property appraiser in matters of valuation; otherwise, the courts would be clogged beyond endurance with persons seeking judicial reduction of the taxable value of their land.

The appraiser's discretion in establishing full value of property, however, is not the issue;

consequently, each of the cases cited by Appellant and Intervenor for this proposition is irrelevant to the case at bar. The question turns, rather, on the discretion, or absence thereof, of the property appraiser to force disclosure of private financial records held by private citizens. The Appellant and Intervenor have failed to cite a single case for the proposition that the property appraiser should have any discretion within this area of law.

Reflection upon public policy considerations for the proposition that the property appraiser should have discretion to determine the scope of discovery by his office reveals, the frailties and hazards of the proposition. Such a proposal is analogous to vesting the sheriff with authority to determine whether or not probable cause exists for the issuance of a search warrant, or of authorizing the prosecutor to rule upon questions of admissibility.

The statute in question is in derogation of individual rights. The statute in question represents a diminution of these rights; as such, it is subject to strict construction to limit the power of government for the protection of the citizen. See page 9, Supra. From that, it necessarily follows that the discretion to determine whether or not private financial documents are necessary to a determination of just valuation must be vested in a judge and not in the public officer who

is seeking to force the production of the private records. The citizen is, at a minimum, entitled to such protection.

CONCLUSION

The Trial Judge's denial of the request for a subpoena duces tecum was proper and should be affirmed for the following reasons:

1. Appellant's demand for the production of Appellee's financial records did not conform, even facially, to the requirements of Rule 12D-1.05 under which authority was claimed.
2. Appellant failed to establish to the satisfaction of the trial judge that the information it demanded of Appellee was "necessary" for proper valuation of his property.
3. The courts are the proper institution for construing §195.027(3), Florida Statutes, and for determining whether a subpoena shall issue.

CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing Amicus Curiae Brief of Florida Citrus Mutual has been furnished by regular U.S. Mail on this 6 day of December, 1985.

J. Terrill Williams
Assistant Attorney General
Tax Section - Department of Revenue
The Capitol
Tallahassee, Florida 32301

Stuart L. Simon
2401 Douglas Road
Miami, Florida

Larry E. Levy
Post Office Box 82
Tallahassee, Florida 32302

Daniel A. Weiss
Suite 2810
Metro Dade Center
111 NW First Street
Miami, Florida 33128-1993

Mygnon C. Evans
Staff Legal Counsel
Florida Citrus Mutual
Post Office Box 89
Lakeland, FLorida 33802
813/682-1111