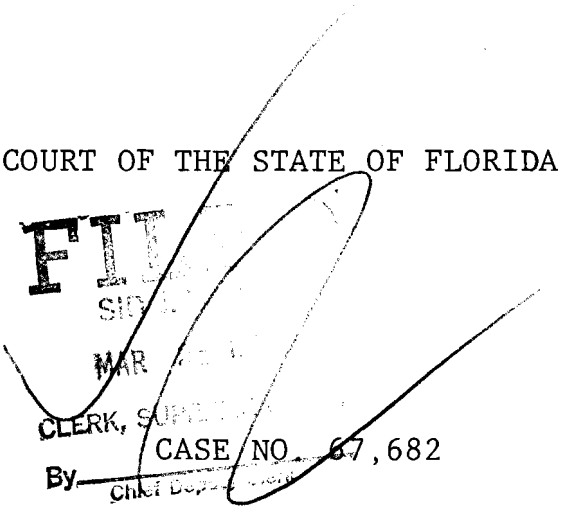
IN THE SUPREME COURT OF THE STATE OF FLORIDA



WILLIAM MARKHAM,
et al.,

Petitioners,

vs.

NEPTUNE HOLLYWOOD
BEACH CLUB, etc.,

Respondents./

CASE NO. 67,682

On Discretionary Review to the Fourth District Court of Appeal of Florida, Case Number 84-720.

INITIAL BRIEF ON THE MERITS OF CO-PETITIONER, DEPARTMENT OF REVENUE

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

TABLE OF AUTHORITIES CONTINUED

PRELIMINARY STATEMENT

The Petitioner, RANDY MILLER, as Executive Director of the Florida Department of Revenue, will be referred to as the "Department." The Petitioner, WILLIAM MARKHAM, as Property Appraiser of Broward County, will be referred to as the "Property Appraiser." The Respondents, Neptune Hollywood Beach Club, Inc., Neptune Hollywood Beach Club Condominium, Inc., and Hollywood Isle Development, Inc., will be referred to collectively as the "Taxpayers."

The term "trial court" will be used to refer to the Honorable James M. Reasbeck of the Seventeenth Judicial Circuit Court in and for Broward County, Florida. The term "District Court" will be used to refer to the Fourth District Court of Appeal of Florida.

The symbol "A" followed by a page number will be used to refer to the Appendix located at the back of this brief of the Department.

STATEMENT OF THE CASE AND FACTS

The Petitioner, Department, adopts the Statement of the Case and Facts set forth in the Brief on the Merits of Petitioner William Markham, Property Appraiser of Broward County.

SUMMARY OF ARGUMENT

In the year 1978, this Court unanimously held that the sixty (60) day time period for filing an action challenging a tax assessment under §194.171(2), Fla. Stat., was a jurisdictional statute of non-claim rather than a statute of limitations. See, Coe v. ITT Community Development Corp., 362 So.2d 8 (Fla. 1978).

Notwithstanding the unequivocal holding of the Coe case, the Second District Court of Appeal of Florida subsequently failed to follow said decision in its 1982 opinion in the case of Cape Cave Corp. v. Lowe, 411 So.2d 887 (Fla. 2nd DCA 1982), rev. den. at 418 So.2d 1280 (Fla. 1982). In the Lowe case, the Second District Court held that said provisions of §194.171(2) constitute a statute of limitations and not a jurisdictional statute of non-claim, and no effort was made in the Lowe opinion to attempt to distinguish the seemingly contrary holding of this Court in the prior Coe case.

In an apparent response to the seeming confusion created by the appellate decisions over the characterization of the sixty day filing requirements of §194.171(2) as either a jurisdictional statute of non-claim or as a statute of limitations, the Florida Legislatuare enacted in the year 1983 §7 of Ch. 83-204, Laws of Fla. Section 7 of Ch. 83-204 added a new subsection (6) to §194.171, which subsection expressly made jurisdictional by statute the sixty (60) day period for filing actions challenging tax assessments under subsection 194.171(2). (A. 1-2).

It is a basic rule of statutory construction that the courts must assume that the Legislature intended a statutory amendment to have had some objective and to serve a useful purpose, and the courts should give effect to the amendment. The decision of the District Court is explicitly based entirely on pre-1983 case law. (A. 3-4). The District Court's opinion completely ignores the plain language of the 1983 legislative amendments to §194.171, and should be reversed by this Court.

ARGUMENT

THE STATUORY PROVISIONS OF SUBSECTIONS 194.171(2) AND (6) (1983), FLA. STAT., IMPOSING A SIXTY DAY TIME PERIOD FOR FILING AN ACTION CHALLENGING A TAX ASSESSMENT WAS EXPRESSLY MADE A JURISDICTIONAL REQUIREMENT BY THE FLORIDA LEGISLATURE IN 1983 AND THE DISTRICT COURT COMMITTED REVERSIBLE ERROR BY IGNORING THE PLAIN LANGUAGE OF THE 1983 STATUTORY AMENDMENT

The Department hereby joins with the Property Appraiser in his contention that the provisions of §194.171(2) and (6), Fla. Stat., (1983) constitute a statutory jurisdictional condition precedent to the filing of an action challenging a tax assessment, which jurisdictional requirements may not be ignored by the courts of the State of Florida.

The holding of the District Court below was based primarily on the "voidable-void" test enunciated in the case of Lake Worth Towers, Inc. v. Gerstung, 262 So.2d 1 (Fla. 1972). The Department submits that such "voidable-void" case law distinction with respect to the sixty day time period under the former provisions of §194..171(2), Fla. Stat. (1967), is no longer viable and was rendered obsolete by the Legisature's promgulation in the year 1983 of §7 of Ch. 83-204, Laws of Fla.

In the Lake Worth Towers, Inc., case, supra, this Court did hold that, under the statutory language existing in 1968, the challenged assessment on the property (including the value

of both the land and improvements) was "void". This Court thereupon concluded in Lake Worth Towers that the assessment was properly challenged even though the sixty day statutory time period had admittedly expired prior to the filing of the suit.

However, in the year 1978, this Court subsequently held that said sixty day period prescribed by §194.171(2) was a jurisdictional statute of nonclaim, rather than a statute of limitations. See, Coe v. ITT Community Development Corp., 362 So.2d 8 (Fla. 1978). On page 9 of the Coe opinion is cited a line of appellate cases going back to the year 1942 as support for the holding that the sixty day time period set forth in §194.171(2) was a jurisdictional statute of nonclaim. On page 9 of the Coe opinion Justice England, writing the unanimous opinion of this Court, also observed that the use of the term "statute of limitations" in the prior opinion in the Lake Worth Towers, Inc., case was an "inartful use" of the term.

Notwithstanding the clear and unanimous holding of this Court in Coe, supra, that the sixty day time period in §194.171(2) was a jurisdictional statute of nonclaim, the holding of the Coe case was not followed by the Second District Court of Appeal in its decision in Cape Cave Corp. v. Lowe, supra. In the Lowe case, the Second District Court totally ignored the holding of the Coe case and ruled that the sixty

day time period prescribed in §194.171(2) was a statute of limitations and not a jurisdictional statute of non-claim. The Lowe opinion of the Second District Court allowed the taxpayer to proceed with an action challenging the ad valorem tax assessment on its property notwithstanding the taxpayer's undisputed failure to bring the action within the required sixty day time period. This Court inexplicably declined to exercise its discretion to review the seemingly conflicting opinion of the Second District Court in the Lowe case.

In an apparent response to the Lowe decision reflecting the seeming confusion in the appellate courts of Florida over the characterization of the sixty day time period prescribed in §194.171(2) as either a jurisdictional statute of nonclaim or a statute of limitations, the Legislature enacted in 1983 Ch. 83-204, Laws of Fla. Section 7 of Ch. 83-204 amended §194.171, Fla. Stat., by (among other things) adding an additional subsection (6) to read as follows:

> The requirements of subsections (2), (3), and (5) are jurisdictional. No court shall have jurisdiction in such cases until after the requirements of both subsections (2) and (3) have been met. A court shall lose jurisdiction of cases where the taxpayer has failed to comply with the requirements of subsection (5). (e.s.). (A. 2).

The Department suggests that it would be obvious to even a neophyte in the field of statutory construction that the plain

lauguage of §194.171(6), Fla. Stat. (1983), expresses the clear and unmistakable intent of the Florida Legislature that the sixty day time period for filing an action to challenge an assessment under subsection 194.171(2) was to be considered a jurisdictional statute of nonclaim by the courts of Florida.

The decision of the District Court below completely ignored the jurisdictional language inserted by the Legislature into the statutory provisions of §194.171 in the year 1983. In fact, the opinion below is expressly based on the old "voidable-void"distinction enunciated by this Court in 1972 in the Lake Worth Inc., case, supra.

The holding of the District Court (totally ignoring the 1983 statutory amendments made by the Legislature to the critical provisions of §194.171) violates an established rule of statutory construction that "it should never be presumed that the Legislature intended to enact meaningless and useless legislation and it must be assumed that the provisions enacted by the Legislature are intended to have some useful purpose." See, Smith v. Piezo Technology & Professional Administrators, 427 So.2d 182 (Fla. 1983); and Dickinson v. Davis, 224 So.2d 262 (Fla. 1969).

In the treatise on statutory construction in 49 Fla. Jur.2d, Statutes, §134, page 176 the following general rule of statutory construction is set forth:

> With regard to a statutory amendment, the rule of construction is to assume that the legislature intended the amendment to serve a useful purpose. In making material changes in the language of a statute, the legislature is presumed to have intended some objective or alteration of the law unless the contrary is clear from all the enactments on the subject. The courts should give appropriate effect to the amendment. . . . (e.s.)

The inherent power of the Legislature to enact general law pertaining to the jurisdiction of circuit courts in cases involving the legality of tax assessments has been expressly recognized by the appellate courts of this state. See, Williams v. Law, 368 So.2d 1285, 1287 (Fla. 1979); and State ex rel. Dept. of General Services v. Willis, 344 So.2d 580, 589 (Fla. 1st DCA 1977). On pages 1286-1287 of the opinion in Williams v. Law, supra, this Court observed as follows:

> For many years the circuit courts have had original and exclusive jurisdiction of all cases involving the legality of any tax assessment. Art. V, §6(3), Fla. Const. (1968); Fla. Const. of 1885, Art. V, §11. When Art. V was revised in 1972, this jurisdiction was retained subject to change by general law. Art. V, §20(c)(3), Fla. Const. . . . . (e.s.)

In the case of Miller v. Nolte, 453 So.2d 397 (Fla. 1984), this Court did retreat from its prior ruling in the Coe case that the pre-1983 provisions of §194.171(2) constituted a jurisdictional statute of nonclaim and held that due process required that said provisions be considered a statute of limitations. However, the Department respectfully submits that the holding in Miller v. Nolte, supra, is not applicable to, nor controlling on, this proceeding.

The Department concedes that the opinion in Miller v. Nolte was rendered subsequent to the July 1, 1983, effective date of the enactment of §7 of Ch. 83-204 codifying into the statutes the rule that the sixty day time period for filing a challenged tax assessment under §194.171(6) is a jurisdictional requirement. However, the issues involved in Miller v. Nolte arose out of a challenge by a taxpayer to a 1981 tax assessment, and this Court was construing the provisions of §194.171(2), Fla. Stat. (1981).

Thus, the interpretation of the 1983 provisions of §194.171(6) statutorily characterizing the sixty day time period in subsection 194.171(2) as a jurisdictional requirement was obviously not before the Court in Miller v. Nolte, supra. In fact, there was not one single reference in the Miller v. Nolte opinion to the 1983 amendments to §194.171, either in dictum or in any footnotes.

The Department submits, in closing, that the decision of the District Court (if left intact) would effectively render meaningless the current statutory provisions of subsection 194.171(2) and (6), Fla. Stat., thereby creating state-wide confusion in the assessment and collection process for ad valorem taxes.

The undersigned counsel has represented the Department in numerous ad valorem tax case over the years. The ususal "boiler-plate" language in the taxpayers' complaint that

necessitates the joinder of the Department in most ad valorem tax suits is the claim that the assessment "exceeds the just valuation requirements of Art. VII, Sec. 4, Fla. Const., and of s. 193.011, Fla. Stat." (e.s.).

These tax cases alleging that the assessment is in excess of the "just valuation requirements of Art. VII, §4 of the Fla. Const.", are generally tax cases involving issues primarily of a local nature. In such cases, the taxpayers are claiming that their assessments are too high and the county Property Appraiser is the primary defendant. The Department is generally only a nominal party in such cases and is a necessary statutory defendant under §194.181(5), Fla. Stat., only because of the boiler-plate allegations in the complaint that the assessment exceeds the "just valuation requirements of Art. VII, Sec. 4, Fla. Const."

Thus, the holding of the District Court that a challenge to an assessment on constitutional grounds automatically renders inapplicable the sixty day provisions of §194.171(2), Fla. Stat., would seemingly affect a substantial majority of all of the thousands of property tax cases filed each year in the sixty seven (67) counties of the State of Florida!

The Department respectfully submits that such a potential chaotic result would constitute an unwarranted judicial intrusion into the detailed statutory process for the

assessment and collection of ad valorem taxes as set forth in Chapters 192 through 197 of the Florida Statutes. This tax assessment and collection process is an intricate and interlocking statutory mechanism wherein "time is of the essence." Consequently, the efficient and prompt collection of ad valorem tax bills is absolutely vital to the financial integrity and stability of the counties, municipalities and special taxing districts throughout the state.

CONCLUSION

The decision below of the District Court holding that the provisions of §194.171(2), Fla. Stat. (1983), constitute a statute of limitations not applicable to a case wherein a taxpayer challenges a tax assessment on constitutional grounds is expressly based on case law dealing with statutory provisions in effect prior to the year 1983. This case law was rendered archaic and was superseded by the 1983 statutory amendments to §194.171 wherein the Florida Legislature added subsection (6) to expressly make the sixty time period for filing an action challenging a tax assessment a jurisdictional requirement.

The Legislature has the inherent power to enact general law dealing with subject matter jurisdiction of the circuit courts of Florida. In making the material changes in the year 1983 by adding the language of §194.171(6), the Legislature is presumed to have intended some objective. The courts of this state should give appropriate effect to this amendment.

The decision of the District should be quashed with instructions that the order of the trial court dismissing with prejudice the Plaintiffs' Complaint because it was not filed within the sixty day time period under §194.171(2) should be affirmed.

I HEREBY CERTIFY that a true and correct copy of the Department's Brief on Merits has been furnished by mail to GAYLORD A. WOOD, JR., Esq., 304 S.W. 12th St., Ft. Lauderdale, FL 33315 and to LEONARD LUBART, Esq., Suite 204, 12000 Biscayne Blvd., North Miami, FL 33181, this 24th day of March, 1986.

Respectfully submitted,

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