

IN THE SUPREME COURT OF FLORIDA

CASE NO. 75,322

RONALD J. SCHULTZ, etc.,
et al.,

Petitioners,

vs.

TM FLORIDA-OHIO REALTY
LTD. PARTNERSHIP, etc.,

Respondent.

FILED

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CLERK, SUPREME COURT

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BRIEF OF AMICUS CURIAE
VALENCIA CENTER, INC.

On review from the
Second District Court of Appeal

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INTEREST OF THE AMICUS

Valencia Center, Inc., was the Appellant before this Honorable Court in Valencia Center, Inc. v. Bystrom, 543 So.2d 214 (Fla., 1989), Supreme Court Case No. 72,548. In its decision therein this Honorable Court determined, four Justices concurring, three dissenting, that a below-market, long term lease could not be the basis for decreasing a property tax assessment on the shopping center of Valencia Center, Inc. Subsequent to this Court's decision in Valencia Center the Second District Court of Appeal determined, Schultz v. TM Florida-Ohio Realty Ltd. Partnership, 553 So.2d 1203 (Fla., 2nd DCA, 1989), the decision here being reviewed by this Court, that a below-market, long-term lease must be the basis for decreasing a property tax assessment on the shopping center of TM Florida-Ohio Realty Ltd.

The property of Valencia Center, Inc., continues to be taxed in Dade County not in accordance with its present use and actual income but in accordance with a use (high-rise offices) that it cannot achieve until the unfavorable long-term lease has expired in the distant future. The property of TM Florida-Ohio Realty Ltd. Partnership in Pinellas County is, on the other hand, because of the Second District Court's decision, correctly taxed in accordance with Section 193.011, F.S., predicated upon its actual income. Valencia Center, Inc., thus has a deep interest in the uniform and proper application of Section 193.011, F.S., as intended by the Florida Legislature pursuant to its authority under Article VII, Section 4, Florida Constitution.

STATEMENT OF THE CASE
AND OF THE FACTS

The critical fact in regard to this brief is the Pinellas County Property Appraiser's failure to use the actual income from the Respondent's property in arriving at the tax assessment valuation.

SUMMARY OF ARGUMENT

When the Pinellas County Property Appraiser failed to use the actual income from the Respondent's property in order to arrive at the tax assessment valuation he violated Section 193.011, F.S., which as written requires him to use such income. As that general law is a regulation enacted to secure "just valuation" of property for tax purposes and is fairly debatable it must be enforced as written.

ARGUMENT

The Florida Legislature has the constitutional authority and duty to define "just valuation" and so long as its regulations to that end are fairly debatable they must be applied as written.

It is the Legislature (and not the county Property Appraiser nor the judiciary) which has been empowered by the Florida Constitution to decide how the Respondent's property is to be taxed. Article 7, Section 4, Florida Constitution, states in pertinent part:

"By general law regulations shall be prescribed which shall secure a just valuation of all property for ad valorem taxation . . ."

Indeed, no real property tax may be assessed other than in accordance with such general law as Article 7, Section 1, Florida Constitution, states, inter alia:

"No tax shall be levied except in pursuance of law."

Simply put, a county Property Appraiser is doubly restricted. First he is mandated to apply the general law regulations enacted pursuant to Article 7, Section 4. Second, he is restrained by Article 7, Section 1, from levying a tax other than as the regulations require.

The basic controlling regulation here is Section 193.011(7), F.S.:

"In arriving at just valuation as required under s. 4, Art. VII of the State Constitution, the property appraiser shall take into consideration the following factors. . .

"(7) The income from said property. . ."

This the Property Appraiser failed to do here, ignoring long-term leases on the property which, when considered, demonstrate and require a lower valuation than the Property Appraiser applied.

The Property Appraiser has argued (initial brief of Petitioner, page 25 et seq.) that he is not required to use the property's actual income, just "consider" it. This argument would place in the ashcan several principles of administrative law, including those requiring administrators to follow the criteria, and only the criteria, established by the Legislature. E.g., Drexel v. City of Miami Beach, 64 So.2d 317 (Fla., 1953). Indeed, in Drexel, an enactment's requirement that the administrators give only their "due consideration" was held invalid as potentially leading to non-uniform, thus discriminatory, results.

Under his argument the Property Appraiser could, as to two identical properties, apply the actual income to one, but not to the other, thus reach substantially different results but not be faulted for such discrimination. The mischief that could arise is self-evident. The Court's adoption of Petitioner's argument would render Section 193.011, F.S., without sufficient legislative guidelines for the Legislature's delegation of its taxing power and would conflict with Drexel.

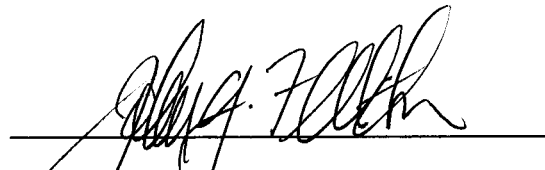
Section 193.011, F.S., must therefore be applied as written, unless it is unconstitutional. It is an enactment

relating to valuation, specifically authorized by organic law. Article VII, Section 4, Florida Constitution. The only issue that could be open to debate is whether it is "just" and even that may not be a permissible subject of inquiry by the Court. See the Editor's discussion at 10 Fla.Jur.2d, Constitutional Law, Section 59, pages 280-281. Assuming, however, that it is such a subject (because it involves an organic mandate) the Court's inquiry is limited in any event to whether there is any rational basis for the Legislature's conclusion that using actual income reaches a just valuation. That is, whether reasonable men could disagree over the justness of using actual income: essentially an application of the fairly debatable rule.

Obviously in the instant case the Second District Court of Appeal had a lively debate, with the majority coming down on the side of just valuation based on actual income. In Valencia Center, Inc. v. Bystrom, 543 So.2d 214 (Fla., 1989) this Court's debate resulted in a 4 to 3 split. The Washington Supreme Court, in Folsom v. City of Spokane, 725 P.2d 987 (Wash., 1988), developed a "compromise" position, adding to the debate. But whatever side of that debate this Court would here come down on, the "just" nature of the legislation is at least fairly debatable, thus must be upheld and applied as written.

CONCLUSION

This Court should affirm the holding of the Second District Court of Appeal. It should, however, make that Court's decision uniform throughout the state by receding from the holding in Valencia Center, Inc., supra, that the Property Appraiser is free to assess the property values on other than actual income.

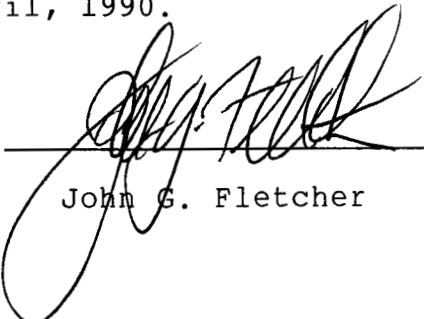


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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that copies of the foregoing brief of Amicus Curiae Valencia Center, Inc., have been mailed to Robert E. V. Kelley, Jr., Rydberg, Goldstein & Bolves, P.A., 220 East Madison Street, Suite 724, Tampa, Fl 33602, and Kent G. Whittemore, One Beach Drive, S.E., Suite 205, St. Petersburg, Fl 33701; Gaylord A. Wood, Jr., 304 S.W. 12th Street, Ft. Lauderdale, Fl 33315-1521; Willa Fearrington, 105 South Narcissus Avenue, Suite 710, West Palm Beach, FL 33401-5529; Robert A. Ginsburg, Daniel Weiss, and Craig Collier, Dade County Attorney's office, Suite 2810, 111 N.W. 1 Street, Miami, Fl 33128 and to Arthur J. England, Jr. and Barry F. Rose, Fine Jacobson, et al., Attorney for International Council of Shopping Center, 100 S.E. 2nd Street, Miami, FL 33131-2112 this 2nd day of April, 1990.



John G. Fletcher