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CLERK SUPREME COURT

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IN THE SUPREME COURT OF FLORIDA

REBECCA E. WALKER, ETC.

Petitioner,

CASE NO. 79,972

v.

District Court of Appeal
4th District - 91-1796

PALM BEACH COMMERCE CENTER
ASSOCIATED, LTD., ETC.,

Respondent.

ANSWER BRIEF OF RESPONDENT

PALM BEACH COMMERCE CENTER ASSOCIATES, LTD.

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STATEMENT OF THE CASE AND OF THE FACTS

The Petitioners are the taxing authorities to wit: Tax Collector, ALLEN C. CLARK (CLARK) and Property Appraiser, REBECCA E. WALKER (WALKER), and they were the Defendants in the trial court and Appellees in the District Court of Appeal. Respondent, PALM BEACH COMMERCE CENTER ASSOCIATED, LTD., was Plaintiff in the trial court and Appellant in the District Court.

References to "(A-)" will be to the Appendix herewith; references to "(ROA-)" will be to the Record on Appeal in the District Court of Appeal, Fourth District.

The Respondent, PALM BEACH COMMERCE CENTER, ASSOCIATES, LTD., basically accepts the statement of the case of the facts as proposed and set forth by Petitioners in their initial brief on the merits filed by Petitioner, WALKER. However, the Respondent would point out that there were actually two hearings and two orders entered by the trial court in this matter. The first order proposed that the Respondent was required to establish more than the appropriate filing of a tax suit together with a requisite good faith payment in order to obtain an injunction, but required that a taxpayer must follow the dictates of a decision of the District Court of Appeal, Third District. Hotelerama Associates, Ltd. v. Bystrom, 449 So.2d 836 (Fla. 3rd DCA 1984).

Subsequent to the court's initial order, the request for injunction again came up for hearing based upon the court's first order, at which time the court announced that it would not precede under its prior order but informed Respondent that it would have to address all of the normal requirements for injunctive relief, including a demonstration of the

likelihood of success on the merits. The District Court of Appeal determined that in a tax suit an injunction would issue pursuant to § 194.211, Florida Statutes, upon an appropriate complaint and a demonstration that it was accompanied by "good faith" payment.

SUMMARY OF ARGUMENT

A taxpayer contesting the ad valorem tax assessed value for its property may either pay the full amount of taxes due and owing as a result of the assessed valuation or may make a good faith payment and seek an injunction to collect the claimed illegal portion of the assessed valuation and resulting taxes. In 1921 the Florida Legislature adopted provisions relating to such a suit with provision for enjoining the normal collection process for the balance of the taxes owed assessed against the excess claimed excessive or illegal valuation. These provisions when originally adopted referred to the collection process which described a sale of the property represented by certificates. The procedure provided today is substantially that originally created in 1921 and the exact language is provided in § 194.211, Fla. Stat. regarding the injunctions against the sale of the property. This reference would still be interpreted in light of the applicable statutory provisions in effect at the time it **was** adopted in 1921. The language clearly provides for the enjoining of the entire collection process including the issuance of certificates based upon bid interest rates representing a first lien on the property.

By adopting this procedure, the legislature in effect provided that when a taxpayer files the appropriate complaint contesting the ad valorem assessed valuation and accompanies it with a good faith payment a temporary injunction would issue without any further showing. A taxpayer would not have to establish the merits of the litigation, that he would suffer irreparable harm other than is caused by the collection

process or that there is no compelling public interest against such a temporary injunction.

The reasoning and holding of the District Court of Appeal, Third District, herein should be upheld by this court.

ARGUMENT

SECTION 194.211, FLORIDA STATUTES WHICH PROVIDES FOR TEMPORARY INJUNCTIVE RELIEF DURING THE PENDENCY OF AN AD VALOREM ASSESSMENT CHALLENGE WOULD ENJOIN THE SALE OF TAX CERTIFICATES TOGETHER WITH ALL OTHER REMAINING PROCESSES FOR COLLECTION PENDING THE FINAL DETERMINATION OF THE ACTION.

POINT I

§ 194.211, Florida Statutes, is not new to the **tax** scheme and prior court review. § 194.211, Fla. Stat. (1991). One has to go back to the late eighteen hundreds when the current scheme was initially adopted by Florida Legislature. In 1895 in regular session, the State of Florida Legislature adopted Chapter 4322 "An Act for the Assessment and Collection of Revenue." The act provided in pertinent part:

Sec. 50. If the taxes upon any real estate shall not be paid before the first day of April of any year, the collector shall advertise and sell in the manner following: He shall make out a statement of all such real estate, specifying the amount due on each parcel, together with the cost of advertising and expense of sale, in the same order in which the land was assessed, and such list shall be published once each week for four consecutive weeks in some newspaper published in the county, if there be a newspaper.

Sec. 51. On the day designated in the notice of sale, at 12 o'clock noon, the tax collector shall commence the sale of those lands on which taxes have not been paid as aforesaid, and shall continue the same from day to day until so much of each parcel thereof shall be sold as shall be sufficient to pay the taxes, cost and charges thereon; and in case there are no bidders the whole tract shall be bid off by the collector for the State; but the collector must offer all of said land as assessed.

Sec. 52. **The** land shall be struck off to the person who will pay the tax, cost and charges for the least number of acres of land, and the portion thereof sold shall be taken com the southeast corner of such parcel, and described in a square form or as near as may be.

Sec. 54. At the sale aforesaid the tax collector shall give to the purchaser a certificate of such sale, describing the lands purchased and the amount paid therefor. . . . (emphasis added)

Section 57 provided for two years to redeem the land. Chapter 4322, § 57, Laws of Florida (1895).

In 1921 the legislature adopted Chapter 8586 entitled "An Act to Vest in Courts of Chancery the Jurisdiction to Inquire Into and Determine the Legality of Tax Assessments and to Enjoin the Collection of Illegal Taxes on Real or Personal Property." Chapter 8586, Laws of Fla. (1921). Section 1 of this act provides for the jurisdiction and prerequisites to filing a tax challenge to ad valorem tax assessments, Reading of this act reflects that it is much the same procedure as provided in § 194.171, Florida Statutes. Section 2 of the act provided for injunctions and is exactly the same as § 194.211, Florida Statutes, today. Finally, Section 3 of the 1921 act provides for the appropriate parties in any tax suit. (A-1)

When the legislature adopted Chapter 8586, Laws of Florida (1921), the provision for collection was still the same that was originally adopted in the 1895 Act as amended by Chapter 4888 (1901). Ch. 4888, Laws of Fla. (1901). The tax certificate issued actually represented the acknowledgement of sale of so much of the lands necessary to be sold or stricken off to pay the tax revenues due and owing. The certificates could then be converted into a deed after two years of the date of the sale of certificate for the sale of lands. Chapter 4888, Sections 561, 567, 477, Laws of Florida (1901).

The process in **use** today of the sale of a tax certificate based upon an interest rate which becomes a lien on the entire property was adopted in **1972** by the legislature. Chapter 72-268, Laws of Florida (**1972**), As can be seen by the earlier decisions of the Florida Supreme Court when it referred to the sale of lands for taxes and more importantly the enjoining of such sale of land for taxes they were really referring to the sale of lands by way of the certificate which represented an interest in the amount of property necessary to be sold to secure payment of the appropriate delinquent tax, City of West Palm Beach v. Eppelman, 181 So. 894 (Fla. 1938); and Hardesty v. Town of Holly Hill, 131 So. 134 (Fla. 1930). See also dissent in Metropolitan Dade County v. Adler Built Industries, Inc., 222 So.2d 264 (Fla. 3rd DCA 1969).

This argument was advanced to the District Court of Appeal which found that § 194.211, Florida Statutes, governed the sale of certificates as well as the sale of the actual property by a later issued tax deed.

Therefore, the statute was originally intended to cover the sale of real property evidence by a certificate. In **1972** the legislature **changed** to the sale of the certificate on all of the land creating a lien on the entire property with the certificate for the tax, costs, and the bid interest rate instead of the property. Chapter **72-268**, Laws of Florida (1972).

POINT II

IN 1921, THE LEGISLATURE BY INCORPORATING A PROVISION FOR A TEMPORARY INJUNCTION INTENDED TO DISPENSE WITH THE NORMAL REQUIREMENTS FOR INJUNCTIVE RELIEF PENDING THE OUTCOME OF AN ACTION TO CHALLENGE AN AD VALOREM TAX ASSESSMENT.

Respondent believes that the legislature provided a scheme in the 1921 legislature to allow a property owner a means to challenge an assessed valuation. Chapter **8586**, Laws of Florida (1921).

(A-1) This scheme remains today in Sections 194.171, 194.181, and 194.211, Florida Statutes (1991).

This procedure is consistent with the scheme for providing a taxpayer an opportunity to invoke the jurisdiction of the circuit courts to protect against an illegal or excessive tax while at the same time protecting the public's interest. Section 194.171, Florida Statutes, provides for the initiation of appropriate tax challenge in the circuit courts but only after taxpayer has demonstrated that he has paid in good faith a sufficient amount of taxes to represent the value he believes is legally appropriate for **tax** purposes. § 194.171 Fla. Stat. (1991) Section 194.181 provides for the parties to a tax suit. The illegal or excessive portion of the tax remaining due and owing would be enjoined pending the termination of the action. § 194.211, Fla. Stat. (1991).

Section 194.192, Florida Statutes, provides that in the event the taxpayer is not successful, the taxing authorities are able to collect the balance of the tax owed upon conclusion of the litigation together with interest at a rate specified by the

legislature which at this time is 12%. § 194.192 Fla. Stat. (1991)
The lien **for** taxes remains throughout the litigation as a first
lien on the property. Section 197.122 Fla. Stat. (1991).

The legislature also went further to establish a 10% penalty
to those taxpayers who fail to make a payment which is, in fact,
good faith as determined by the court. § 194.192, Fla. Stat.
(1991); *Hotelerama Associates v. Bystrom*, *supra*.

The procedure is simple and rational. The taxpayer files
suit, makes a good faith payment and enjoins the collector from
utilizing the options available to him or her under Chapter 197 to
complete the collection of the balance of the tax due. The
government remains protected in all instances with the first lien
on the property earning a viable interest rate as established by
the legislature and in a position to obtain a penalty if, in fact,
the taxing authorities have demonstrated the taxpayer has not acted
in good faith. Government is also protected against taxpayers
unable to demonstrate on the face of the pleadings sufficient
allegation for relief by **way** of the normal rules of procedure by
motion practice in the courts.

On the other side the position of the Petitioner taxing
authorities appears to be contrary to any rational scheme to allow
a citizen to challenge as unlawful an assessed value on his or her
property and not suffer damages even if he or she wins. The
collection provisions for ad valorem taxes provide that when there
is no litigation a delinquency in the payment of the tax is
published in the newspaper and followed up by a sale of tax

certificates representing a first lien on the real property. § 197.432, Fla. Stat. (1991). The certificates are sold at public auction with the actual interest rate being the variable placed up for bid. The bidding commences at 18%. § 197.172, Fla. Stat. (1991). The certificate then is outstanding for two years at which time a tax deed may be applied for. § 197.502, Fla. Stat. (1991).

When a taxpayer has invoked the jurisdiction of the courts to challenge his assessed valuation the Petitioners would argue nothing changes until the tax deed is applied for. If a taxpayer pays the entire tax that may be due and owing and is later successful in obtaining a judgment for a refund, a taxpayer is not entitled to interest on the **taxes** paid. Department of Revenue v. Goembel, 382 So.2d 783 (Fla. 5th DCA 1980). This is obviously not on parity to the state's protection of earning interest on the unpaid balance involved when a good faith payment is made.

If an injunction is not entered when a good faith payment is made a taxpayer would be subjected to the collection process. (ROA-34,35,36) The collector, under Chapter 197, would impose a minimum 3% interest until the certificate is sold, would advertise the certificate for tax sale and incur the expenses of the sale. § 197.432, Fla. Stat. (1991). Then the property would be subject to a bid interest rate of up to 18%. §§ 197.172; 197.432 Fla. Stat. (1991). If the taxpayer is successful in his litigation and eliminates a portion of the balance of the tax, the taxing authorities are not liable to the Plaintiff for reimbursement of these expenses. (ROA-16,35,42) At the trial court level the

collector was not able to respond as to whose responsibility it was to reimburse the certificate holder these costs and expenses. (ROA-16,35,42)

This scheme was obviously not intended by the legislature when it provided the alternative of the good faith payment and injunction offered in 1921 Legislation, and still provided today. §§ 194.181, 194.211, Fla. Stat. (1991). These provisions have been previously reviewed and interpreted by earlier decisions of this Supreme Court. Hardesty v. Town of Holly Hill, supra; City of West Palm Beach v. Eppelman, supra. The court found that the sale of the certificate representing the interest in property was, in fact, irreparable harm and that an injunction was appropriate in a tax suit. Hardesty, supra. The Eppelman, supra, court found that where there was equity in the complaint and the trial judge determined, based upon that the complaint, that actual value was other than as assessed, an injunction was entirely appropriate under Chapter 8586 Laws of Florida (1921). See also Times Publishing Company v. Williams, 222 So.2d 470 (Fla. 2nd DCA 1969).

Legislature has provided in many instances for injunctive relief as a means of enforcing its laws or providing a means for the citizens to enforce laws adopted by the legislature. Times Publishing, supra. In these instances it would seem to be a useless act to have to establish the likelihood of success and the other prerequisites to injunctive relief when the legislature has already stated that it is an appropriate remedy, as the

District Court states in Times Publishing, supra, at p. 476.

[9,10] On the other hand, we cannot presume that the legislature employed useless language. So if the provision granting jurisdiction to the circuit courts to issue injunctions to enforce this act is to be given any legal effect, it must be said that it is the equivalent of a legislative declaration that a violation of the statutory mandate constitutes an irreparable public injury; and we are aware of no legal barrier to such a legislative proclamation concerning the subject matter of the act before us. The effect of such a declaration in a subsequent judicial proceeding, the, would be that one of the requisites for a writ of injunction need not be proven, i. e., an irreparable injury; **and** a mere showing that the statute has been or is clearly about to be violated fully satisfies such requirement.

The 1921 legislature by adopting Chapter 8586, Laws of Florida, was dispensing with the normal requirements for injunction. See Hotelerama, supra; Islandia Condominium Association, Inc. v. Vermut, 438 So.2d **89** (Fla. 4th DCA 1983).

The sale of tax certificates constitutes irreparable harm. See Point I, supra. This, together with the potential of not being able to receive interest on **any** refunds when successful in a tax assessment challenge in which full tax is paid or potentially losing the costs of collection as indicated by the Petitioner, CLARK, constitute irreparable harm.

There is only one remedy available to challenge an assessment for ad valorem tax purposes. This exclusive remedy is provided in Chapter 194, Florida Statutes. If a taxpayer has made a good faith payment and is partially successful in such a tax challenge but certificates have been sold at 18% for the balance owed, the taxpayer would be liable for the costs to sell their certificate

and the additional interest above the 12% specified in § 194.192, Florida Statutes. There being no other remedy, the only protection is injunction. As noted, the only alternative under Chapter 194 is to pay the full tax but not be entitled to interest on any refund. Such a requirement is not warranted. North Port Bank v. State, Department of Revenue, 313 So.2d 683 (Fla. 1975).

A property owner, as a taxpayer, has a clear legal right to challenge an assessed value upon compliance with Chapter 194, Florida Statutes. The public interests are protected as shown by this court in North Port Bank, supra. The government is protected by a lien on the property, it receives 12% interest on any deficiency it becomes entitled to and a 10% penalty if the taxpayer has acted in bad faith. Sections 194.192, 197.122, Florida Statutes (1991); North Port Bank, supra; Hotelerama, supra.

The purpose of the temporary injunction is to preserve the status quo until trial. Holly Hill, supra; Hardesty, supra; Hotelerama, supra. The nature of the suit is to cancel illegal taxes not for permanent injunctive relief. Chapter 194, Florida Statutes (1991). If the taxpayer is successful, the illegal portion of the taxes are canceled and there is nothing for the collector to collect. As stated by this Court in Lewis v. Mosley, 204 So.2d 197 (Fla. 1967):

At this stage of the proceedings the allegations of the complaint, as amended, which are well **pled** must be taken as true. When the principles to which reference has been made are applied to the facts, thus admitted, the conclusion is that the complaint, as amended, states a cause of action and should not have been dismissed nor the temporary injunction dissolved.

POINT III

LOCAL GOVERNMENT WILL NOT BE HARMED BECAUSE THE COLLECTOR IS TEMPORARILY ENJOINED PENDING A SUIT CONTESTING AD VALOREM TAX ASSESSMENT.

The Petitioner's assert that unless this Court requires stringent standards before granting injunctions against sale of tax certificates, local government would be harmed. They reason that if they cannot borrow the funds at the expense of the taxpayer, they have no other source of obtaining these funds. This proposition fails for several reasons.

The obvious is that if the taxpayer pays the full amount and **seeks** a refund or tax certificates are sold and the taxpayer is successful, the governing bodies must immediately refund the tax to the taxpayer or certificate holder, which in a large tax challenge might come as an unfortunate surprise to local government. In any event, it has to be paid.

The other alternative is to borrow on a short-term basis. See § 125.01(1)(r), Florida Statutes (1991) if there is a temporary shortfall in collections.

The legislature has given the taxpayer two alternatives: (1) pay the full tax and **seek** a refund with no interest, or (2) make a good faith payment and chance interest at 12% accruing against any deficiency found by the Court. **Petitioners wish to add** a condition on the second of these or provide a third.

They urge that a taxpayer must be obligated at the outset of the action to establish that the presumption afforded the property appraiser will be overcome. See Blake v. Xerox Cora.,

447 So.2d 1348 (Fla. 1984). Even with this, they argue there is an adequate remedy at law, therefore, the courts could never issue an injunction since Chapter 194, Florida Statutes, is the exclusive remedy for all taxpayers.

Therefore, they submit that there is their second alternative (the third alternative), pay the good faith payment, have the certificates sold, obtain a reduction in value but not to the extent of the good faith payment. In this event, the taxpayer would have to pay the balance of the tax owed with interest at 12% [see § 194.192, Florida Statutes (1991)] but pay the expenses and potentially the penalty interest [up to 18%; § 197.172, Florida Statutes (1991)] to redeem the tax certificates. Adler Built Industries, Inc. v. Metropolitan Dade County, 231 So.2d 197 (Fla. 1970).

What the Petitioner really seeks is to undermine the good faith payment provisions so local government would be borrowing at no interest if the action is won by the taxpayer. Such would render the provision unconstitutional. North Port Bank, supra.

This Court has held:

In deciding questions relating to procedure employed by a governmental taxing agency one must bear in mind at the outset that laws providing for taxation must be construed most strongly against the government and liberally in favor of the taxpayer. Lewis v. Mosley, supra, at p. 201.

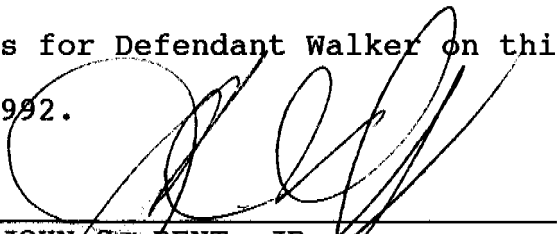
Therefore, this Court should adopt the reasoning and holding of the District Court of Appeal, Third District, herein, and answer the certified question by adopting the district court's decision.

CONCLUSION

The District Court of Appeal, Third District, in its opinion below appropriately determined that the provision providing for injunctive relief, § 194.211, Fla. Stat. governed both the enjoining of the sale of tax certificates as well as the property. The legislature intended by the adoption of this provision to dispense with the normal requirements for issuing injunctions that a taxpayer who files a complaint which states an appropriate cause of action for ad valorem tax value assessment relief and makes an appropriate good faith payment is entitled to enjoin the collector from pursuing the normal collection process.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished by U.S. Mail to: RICHARD A. KUPFER, ESQUIRE, Attorney for Defendant Clark, P.O. Box 3466, West Palm Beach, Florida 33402; GAYLORD A. WOOD, JR., ESQUIRE, 304 Southwest 12th Street, Ft. Lauderdale, Florida 33315-1521; and WILLA A. FEARRINGTON, ESQUIRE, 515 North Flagler Drive, Suite 601, West Palm Beach, Florida 33401-4321, Attorneys for Defendant Walker on this 27th day of July, 1992.



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APPENDIX

LAWS OF FLORIDA.

CHAPTER 8586—(No. 191).

409

Chap. 8586

1921

AN ACT to Vest in Courts of Chancery the Jurisdiction to Inquire Into and Determine the Legality of Tax Assessments and to Enjoin the Collection of Illegal Taxes on Real or Personal Property.

Be It Enacted by the Legislature of the State of Florida:

Section 1. That Courts of Chancery in this State shall have jurisdiction in all cases involving the legality of any tax, assessment or toll, and shall inquire into and determine the legality, equality and validity of the same under the constitution and laws of the State of Florida, and shall render decrees setting aside such tax, assessment or toll, or any part of the same, that shall appear to be contrary to law, provided that the complainant shall in every case tender into court and file with the bill of complaint the full amount of any such tax, assessment or toll which he shall admit to be legal and due by him, or file with the bill of complaint a receipt showing payment of the same prior to the institution of the suit.

Chancery jurisdiction in tax assessments.

Sec. 2. That in any such cases, the court may issue injunctions to restrain the sale of real or person property for any tax, assessment or toll which shall appear to be contrary to law or equity, and in no case shall any bill be dismissed because the tax assessment or toll complained of, or the injunction asked for, involves personal property only.

Injunctions.

Sec. 3. That the only necessary party defendant to any such suit shall be the person whose duty it shall be to collect or enforce the collection of the tax, assessment or toll complaint of, and service upon such person shall be deemed binding upon the county, State or municipality for whose benefit the tax, assessment or toll was levied, but any officer or other person interested may intervene and defend the same upon application to the court.

Parties defendant.

Sec. 4. All laws or parts of laws in conflict with this Act are hereby repealed.

Sec. 5. This Act shall take effect upon its becoming a law.

Approved June 14, 1921.