

FILED

SID J. WHITE

AUG 17 1999

CLERK, SUPREME COURT

By _____
Chief Deputy Clerk

IN THE SUPREME CO RT OF FLORID.

CASE NO. 79,972

REECCA E. WALKER, etc., and ALLEN C.
CLARK, etc.,

Petitioners,

-vs-

4DCA CASE NO. 91-01796
T.C. CASE NO. CL 91-1870 AO

PALM BEACH COMMERCE CENTER
ASSOCIATION, LTD, a Florida Limited
Partnership,

Respondent,

ON DISCRETIONARY REVIEW FROM THE
DISTRICT COURT OF APPEAL,
FOURTH DISTRICT OF FLORIDA

REPLY BRIEF OF
REBECCA E. WALKER,
AS PALM BEACH COUNTY PROPERTY APPRAISER

✓
WILLA A. FEARRINGTON, ESQ. and
Law Offices of
WOOD & STUART, P.A.
304 S.W. 12th. Street
Fort Lauderdale, FL 33315

INDEX

INDEX	.	.	.	.	.i
CITATIONS OF AUTHORITY	.	.	.	.	,ii
DISCUSSION	.	.	.	.	.1
CERTIFICATE OF SERVICE	.	.	.	.	.7

CITATIONS OF AUTHORITY

CASES

<u>Blake v. Xerox.</u> 447 So.2d 1348 (Fla. 1984)	6
<u>Keith Investments v. James.</u> 220 So.2d 695 (Fla. 4th DCA 1969)	6
<u>State ex rel. Northern Investment Corp. v. Lee.</u> 187 So. 368 (Fla. 1939)	5

STATUTES

Ch. 85-342, Laws of Florida. 1985	1
§194.171, F.S.	5
§194.171(3), F.S.	3
§194.192, F.S.	3. 4
§194.193, F.S.	5
§194.211, F.S.	1. 3
§194.432, F.S.	1
§197.122, F.S.	2. 6
§197.205 F.S. (1969)	1
§197.432, F.S.	2. 3
§197.432(2), F.S.	1
§197.432(13), F.S.	1
§197.443, F.S.	4
§197.444, F.S.	4

DISCUSSION

In tracing the history of the tax certificate, Respondent identifies the very essence of the reason that the law does **not** provide for injunction against the sale of the modern tax certificate. Contrary to the assertion propounded by PBCC at **AB-5-6**, §194.432, **F.S.** is not a re-write of a prior statutory provision for the sale of tax certificates, but was created as a new procedure in 1985. See, Ch. 85-342, **Laws of Florida, 1985** Prior to that time, the only mention of a "tax certificate" in the statutes was as indicated in §197.205, **F.S. (1969)**. That section in no way provides for the sale of a certificate prior to the actual sale of the property, but merely identifies the **form** of the document ("certificate") which represented the actual sale of the land.

The provision for sale of a tax certificate in §194.432, **F.S.** in no **way** resembles any **prior** provision. There is no **prior law** which did not involve a divestiture of property rights. [See §197.432(2), and (13), **F.S.**] **Absent** that divestiture, the harm to the delinquent taxpayer which creates the detriment necessary for an injunction is missing. On the other hand, the provision of §194.211, **F.S.** for injunction against **tax sales**, which PBCC attempts to have apply to the sale of a tax certificate, predates the existence of §197.432, **F.S.** implementing the sale of tax certificates, by some eighty-four years. **1901 Laws of Florida 4888** If the provision regarding injunction ever applied to a sale **of a**

tax certificate, **it was** the "certificate" identified in 8197.205 F.S. (1969), which was not a "tax certificate" at **all** as the **term** is used today, but a "**bill of sale**" for property sold at a tax sale.

Neither is the fact that a **tax** certificate is a lien on property a basis to construe **its issuance** as a basis **for** an injunction. The lien which **arises** through the sale of a tax certificate creates no additional potential for harm to the delinquent taxpayer than **does** the fact that he must pay a tax in the **first place**. Section 197.122, F.S. identifies **the** full amount of the **tax** as a first lien on the **property**, which attaches, not at the time that the taxpayer fails to pay **all or** a portion of the **tax**, but **on** January 1 of the year for which the property is **assessed**. A lien, then, **exists** long before the tax is due, and accrues against every property in the state, not just those who make **partial** payments pursuant to a lawsuit or those whose property is the subject of a tax certificate. The existence of a tax **lien** is universal, and creates no detriment to the **taxpayer as** long as he pays his just taxes at the appropriate time.

The lien created through the sale of a tax certificate is limited in scope and sanctions. §197.432, F.S., which **provides** for **the sale of** tax certificates, provides in section (2) that "[a] lien created through **the** sale of a tax certificate **may not be** enforced in any manner except as prescribed in **this** chapter." Specifically, the lien creates no property rights, nor any right to obtain a judgment. In fact, **in** a circumstance such as the instant

one, if the property owner prevails in court, the certificate holder has no rights at all, except to recover what was **paid** for the certificate.

Clearly, the sale of tax certificates is a money-raising device which allows government to function while a procedure progresses permitting landowners to avoid summary seizure of their property. It gives the landowner time, and in that sense, is **more** nearly a benefit than a detriment.

PECC begins its second point with the bald premise that, "[the] illegal or excessive portion of the tax remaining due and owing would be enjoined pending the termination of the action," [AB-8] This is simply not the law. It is the "sale of ... property" which is enjoined, not the tax. §194.211, F.S. The issuance **of** a tax certificate does not create any rights to the land, nor does it constitute in any way the sale of property.

Neither does the making of a good faith payment constitute a basis for an injunction **against** the options available under Chapter 197, as alleged at AB--9. §194.171(3), F.S., which provides for the "good faith" payment, is silent as to its basis. Neither §194.211, F.S., nor any portion of Chapter 197 makes reference to an injunction following the making of such a payment. Each and every one of the cases referred to at AE-11 far the principle that an injunction should be available on the making of a good faith payment was decided prior to the provisions of §197.432, F.S. implementing the sale of tax certificates, and refers to the sale

of the property and not the issuance of a certificate.

Furthermore, There is no basis for the statement that the lien **and** penalty provided for in §194.192, **F.S.** serve as a protection for the governmental taxing bodies, as alleged at **AB-9**. As detailed in the Initial Brief, the penalty provision in 5194.192, **F.S.** in no way satisfies the needs which arise in a governmental taxing body which is deprived of the funds which it depended upon. Although the lien assures that, at some point in time, the taxing bodies **will** get their money, it does not serve to provide them with the capital necessary to operate the government during the pendency of what might be lengthy litigation. The penalty provision for underpayment of the good faith estimate surely serves as an incentive to the litigating taxpayer to **pay** a reasonable amount in good faith, rather than a mere token, but goes nowhere to cover the potential shortfall to the taxing authority. [See IB-10-111

As to the assertion at **AE-10-11** that a taxpayer who prevails in court would be responsible for paying the costs of any tax certificate which had been sold, PBCC is just plain wrong. Should the taxpayer prevail, the taxes are not due, and the tax certificate is void. §197.443, **F.S.** provides that, if, for any reason, a tax certificate is void, the tax collector shall cancel it. If no cancellation is made, the holder of the certificate has a remedy in circuit court to have the certificate canceled. §197.444, **F.S.** The holder of the certificate takes the **risk**. All he gets for his gamble is the amount he paid. There is no question that a void certificate must **be** surrendered by the holder, and

mandamus lies to compel such surrender, should it not be voluntary. State ex rel. Northern Investment Corp. v. Lee, 187 So. **368** (Fla. **1939**)

The process is quite simple and rational. A taxpayer who makes a good faith payment pendent to litigation under §194.171, F.S. may incur one of three results: (1) He wins; **any** excess payment is refunded; any tax certificate issued is void; there is no cost to him for redemption, and no penalty or interest. (2) He loses; the good faith payment is deemed to have been reasonable; no penalty accrues; he may redeem the tax certificates **like** any other taxpayer, by paying the cost of the certificate and any interest which has accrued. (3) He loses; the court **deems** that the good faith payment was unreasonable; he pays the penalty provided **for** in §194.193, F.S. due to the underpayment; he may redeem the tax certificate **like** any other taxpayer. At no time has he lost any property rights, incurred any detriment nor incurred any unjustifiable cost or damage as a prevailing **party**,

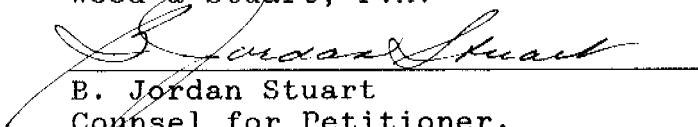
The law provides *for* a waiver of the usual requirements *for* an injunction when the question is loss of property. This must not be confused with the sale of a tax certificate, where no loss of property is involved. In that **case**, there is no waiver, and the usual requirements for an injunction are reasonable, equitable and proper.

Respondent asserts in its third point (AE-14) that the sale of a tax certificate upon the **balance** of taxes due **after** a good faith

payment is **made** constitutes a "borrowing" of **funds** from the taxpayer. This assertion flies in the face of the law. At the time that the lawsuit is instituted, the full amount of taxes are due on the assessed value of the property, and constitute a lien against the property in that full amount. §197.122, F.S. The assessment is **presumed to be** correct until and unless the court finds otherwise. (See, Keith Investments v. James, 220 So.2d 695 (Fla. 4th **DCA** 1969), Blake v. Xerox, 447 So.2d 1348 (Fla. 1984) Local government need not "borrow" that to which it is entitled by operation of law. The special dispensation accorded a litigating taxpayer to make a partial payment of taxes **does not** abrogate any rights of local government to presume that all taxes **are** due and payable, It is surely not in the interest of the public that the taxing bodies should need to borrow (with accompanying expense of debt service) that which the law presumes them to be entitled.

The right to an injunction against the sale of tax certificates on the making of a good faith payment is neither provided for in the law, nor reasonable in fact. The litigating taxpayer is accorded rights by statute which he or she may employ. However, a special right to an injunction which is accorded to no other litigant is not one of them. To accord that right would be to create a special circumstance to the detriment of every other litigant as well as potentially, to all other taxpayers in the state.

Respectfully submitted,
Willa A. Fearrington, Esq. and
Wood & Stuart, P.A.


B. Jordan Stuart
Counsel for Petitioner,
Rebecca E. Walker, as
Palm Beach County Property Appraiser

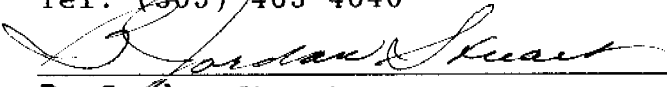
CERTIFICATE OF SERVICE

I HEREEY CERTIFY that a true copy of the foregoing Reply Brief has been furnished by mail this 14th of August, 1992, to JOHN C. DENT, Suite 500, 1549 Ringling Blvd., Sarasota, Florida 34236, Counsel for Respondent.

Willa A. Fearrington, Esq.
515 N. Flagler Drive
Suite 601
West Palm Beach, Florida 33401-4321

and

Wood & Stuart, P.A.
304 S.W. 12th Street
Fort Lauderdale, FL 33315-1521
Tel: (305) 463-4040


B. Jordan Stuart
Attorney for Petitioner