FILED
SID J. WHITE
FEB 1 1993
CLERK, SUPREME COURT
By
Chief Deputy Clerk

IN THE
SUPREME COURT OF FLORIDA

CASE NO. 80,952

SECTION 3 PROPERTY CORP,

Petitioner,

v.

JOEL W. ROBBINS, as Property Appraiser of Dade County, Florida,

Respondents.

PETITIONER'S INITIAL BRIEF ON THE MERITS

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TABLE OF CONTENTS

PAGE

TABLE OF CITATIONS ii

STATEMENT OF THE CASE AND OF THE FACTS 1

SUMMARY OF ARGUMENT 2

ARGUMENT 3

I. THE COURT OF APPEAL ERRED IN DECLINING TO RESOLVE QUESTIONS AND UNCERTAINTIES IN FAVOR OF THE PARTY DEMANDING A JURY TRIAL 3

II. FLORIDA COURTS HAVE CONSISTENTLY GRANTED JURY TRIALS IN CASES CENTERING ON PROPERTY TAX ASSESSMENTS 4

III. THE PRINCIPAL CASES CITED IN THE COURT OF APPEAL'S OPINION ARE INAPPOSITE TO AND/OR CONTRADICT THE COURT OF APPEAL'S HOLDING 6

CONCLUSION 7

CERTIFICATE OF SERVICE 8

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TABLE OF CITATIONS

Cases: Page

Camp Phosphate Co. v. Allen.
77 Fla. 341, 81 So. 503 (Fla. 1919) 7

City of South Miami ex rel. Gibbs,
143 Fla. 524, 197 So. 109 (Fla. 1940) 5

Cosen Investment Co., Inc. v. Overstreet,
154 Fla. 416, 17 So.2d 788 (1944) 7

Dade County v. Salter,
194 So.2d 587 (Fla. 1966) 7

Dickinson v. Allen,
215 So.2d 747 (Fla. 2d DCA 1968) 5

Firstamerica Development Corp. v. County of Volusia,
298 So.2d 191 (Fla. 1st DCA 1974) 4, 5

Hollywood, Inc. v. City of Hollywood,
321 So.2d 65 (Fla. 1975) 3, 4

Lincoln Tower Corp. v. Dunhall's Florida Inc.,
61 So.2d 474 (Fla. 1952) 6

Ozier v. Seminole County Property Appraiser,
585 So.2d 357 (Fla. 5th DCA 1991) 4

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STATEMENT OF THE CASE AND OF THE FACTS

Respondent Joel W. Robbins ("Robbins"), the Dade County Property Appraiser, issued a ruling denying Petitioner's Section 3 Property Corp. ("Section 3") application for an agricultural classification of particular Dade County real property owned by Section 3, for the year 1990.(A.2)[1] Section 3 appealed this decision to the Dade County Property Appraisal Adjustment Board which reversed Robbins' decision and held that Section 3 was entitled to an agricultural classification for the property in question.(A.2-3) Robbins filed an action against Section 3 in the Eleventh Judicial Circuit Court, in and for Dade County, Florida, seeking an order denying the agricultural classification for Section 3 property, and providing that Section 3 was responsible for a considerably higher amount of property taxes.(A.1-3). On March 16, 1992, Section 3 filed a demand for jury trial in Robbins' Dade County Circuit Court action. Robbins filed a motion to strike that demand for jury trial. On May 18, 1992, the trial court entered an order denying Robbins' motion.(A.4)

On June 18, 1992, Robbins filed in the Third District Court of Appeal a Petition for Writ of Certiorari to review the trial court's May 19, 1992, order. After briefing and argument, on November 24, 1992, the Court of Appeal issued its opinion.(A.5-8). The Court of Appeal granted Robbins' Petition and quashed the trial court order denying Robbins' Motion to Strike Section 3's Demand

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[1] References to the Appendix to this brief are designated ("A.").

for Jury Trial. In its opinion, the Court of Appeal acknowledged that "[t]he right to a jury trial in a tax assessment challenge against an agricultural classification appears to be a question of first impression." The Court of Appeal stated that this case presents a question of great public importance, and certified the following question to this Court:

> Is there a right to a jury trial under Article I, Section 22 of the Florida Constitution (1968) in a tax action to challenge a Property Appraiser's grant of an agricultural exemption?

(A.8).

SUMMARY OF ARGUMENT

The fundamental nature of a party's constitutional right to jury trial demands that any question as to entitlement to a jury trial be reached if at all possible in favor of the party demanding a jury. The Court of Appeal's opinion fails to acknowledge and/or apply this basic principle, and instead resolves all unsettled questions in favor of the party moving to strike a demand for jury trial.

Those few appellate decisions which address a jury trial in the context of a case involving property tax assessments have stated and/or implied that a jury trial is available in such a case. In view of the fundamental principle of resolving questions in favor of an entitlement to trial by jury, the Court of Appeal erred in failing to consider and follow these cases.

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The Court of Appeal erred in relying on and citing -- as purportedly supportive of its decision -- case authority which is inapposite and/or contradictory to the Court of Appeal's ruling.

ARGUMENT

I.
THE COURT OF APPEAL ERRED IN DECLINING TO RESOLVE QUESTIONS AND UNCERTAINTIES IN FAVOR OF THE PARTY DEMANDING A JURY TRIAL

Article I, Section 22, of the Florida Constitution, provides that "[t]he right of trial by jury shall be secured to all and remain inviolate." In *Hollywood, Inc. v. City of Hollywood,* 321 So.2d 65 (Fla. 1975), this Court held that this constitutional right to a jury trial is so fundamental that any question as to its entitlement in a given case ought to be resolved if at all possible in favor of the party demanding a jury. 321 So.2d at 71. In *Hollywood, Inc.*, this Court decided that the defendant city was entitled to a jury trial in a county tax assessor's suit for equitable relief and a declaratory decree as to the ownership of certain property. *Id.*

The Third District Court of Appeal's Opinion does not even acknowledge the basic precept set forth in *Hollywood, Inc. v. City of Hollywood.* The text and tenor of the Opinion -- and the question certified by the Third District Court of Appeal -- evince the Third District Court of Appeal's uncertainty as to a tax payer/defendant's entitlement to a jury trial in a property appraiser's actions to revoke an agricultural classification of property. However, the Court of Appeal has chosen to resolve that

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uncertainty *against* the party seeking entitlement to a jury trial. In support of this holding, the court merely stated: (a) that the remedy sought by the plaintiff/ Property Appraiser, which included a "declaratory judgment seeking the reinstatement of the Property Appraiser's original assessment," is "equitable in nature"; (b) "therefore, the right to a jury trial does not apply." Such a determination is inexplicable, in view of this Court's decision in *City of Hollywood*, which upheld a defendant's entitlement to jury trial in a County Tax Assessor's suit for "equitable relief" and "declaratory decree." 321 So.2d at 71.

II.
FLORIDA COURTS HAVE CONSISTENTLY GRANTED JURY TRIALS IN CASES CENTERING ON PROPERTY TAX ASSESSMENTS

Numerous Florida cases demonstrate that Section 3 is entitled to a jury trial in this case, in which Robbins has asked the trial court to overturn the Dade County Property Appraisal Adjustment Board's determination that Section 3 is entitled to an agricultural classification and assessment of its property for the year 1990.

Ozier v. Seminole County Property Appraiser, 585 So.2d 357 (Fla. 5th DCA 1991), dealt with a property owner's suit challenging the tax assessment on his home. The court of appeal held that: "The issue of whether the [the plaintiff's property and other, lower-assessed, properties] are comparable for tax-assessment purposes is to be decided by the jury." In *Firstamerica Development Corp. v. County of Volusia*, 298 So.2d 191 (Fla. 1st DCA 1974), the First District Court of Appeal addressed a factual situation

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directly on point with that presented in that case: review of a finding that a taxpayer's land was not classifiable and assessable as agricultural lands for a particular year. At the outset the court in *Firstamerica* noted that:

> We have for review a final judgment entered by the trial judge following a trial before the court without a jury, and *jury trial having been specifically waived by stipulation of the parties.*

298 So.2d at 192 (emphasis added). Unlike the taxpayer in *First America*, Section 3 has not entered into a stipulation waiving its right to jury trial in this case involving the same legal issues.

This Court has explicitly held that a municipal corporation is as a matter of law entitled to a jury trial to determine its power to tax land to which municipal benefits allegedly have not accrued. *City of South Miami ex rel. Gibbs*, 143 Fla. 524, 197 So. 109 (Fla. 1940). In *Dickinson v. Allen*, 215 So.2d 747 (Fla. 2d DCA 1968) (*reversed on other grounds* at 223 So.2d 310 (Fla. 1969)), the court addressed a taxpayer's action to determine the validity of an increased property tax assessment. The court held that in such a case:

> If the evidence raises the slightest doubt upon any issue of material fact or it will permit of different reasonable inferences, the case should be submitted to a jury which is the constitutional trier of the facts.

215 So.2d at 749.

The aforementioned case authority demonstrates Section 3's entitlement to a trial by jury -- the constitutional trier of facts in this case. Nevertheless, the Court of Appeal's Opinion does not even acknowledge this authority. The Opinion holds that a trial

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court is *barred* from conducting a jury trial in cases involving property tax assessments, and that a trial court judge has no discretion to allow a trial by jury in such cases. The Opinion below makes no attempt to reconcile such a holding with the multiple appellate decisions which have discussed, authorized and approved of a jury trial in such cases. The Court of Appeal has not -- as is required -- resolved questions in favor of the party demanding a jury trial, but has instead erected an unprecedented barrier to the allowance of a jury trial in cases involving tax assessments.

III.
THE PRINCIPAL CASES CITED IN THE COURT OF APPEAL'S OPINION ARE INAPPOSITE TO AND/OR CONTRADICT THE COURT OF APPEAL'S HOLDING

The Opinion cites *Lincoln Tower Corp. v. Dunhall's Florida Inc.*, 61 So.2d 474 (Fla. 1952) -- the principal case in which Robbins relied in his petition for writ of certiorari -- for the proposition that "issues of fact traditionally within the scope of courts of equity are decided by the court." (A.8). In fact, *Lincoln Tower* supports Section 3's entitlement to a jury trial, rather than the Court of Appeal's contrary holding. The Court in *Lincoln Tower* deemed the plaintiff entitled to a jury trial, and stressed the importance of preserving the right to jury trial:

> It seems to us to be evident that a jury to which are submitted proper interrogatories will be able to determine finally, for the present and future guidance of the parties, whether or not the performance of plaintiff meets the standards required by the lease. ***And we think it is immaterial whether the cause is entitled at common***

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> *law or in equity*, or that it partakes of the nature of both, so long as the right to jury trial of pertinent issues is preserved.

61 So.2d at 476 (emphasis added).

The Opinion further relies on *Camp Phosphate Co. v. Allen*. 77 Fla. 341, 81 So. 503 (Fla. 1919), (A.7), a decision which is no longer good law. In *Cosen Investment Co., Inc. v. Overstreet*, 154 Fla. 416, 17 So.2d 788 (1944), this Court stated that "[t]he logic of the opinion in *Camp Phosphate Co. v. Allen* ... is no longer applicable." 154 Fla. at 416. In *Dade County v. Salter*, 194 So.2d 587 (Fla. 1966), this Court reiterated that "[w]e rejected our prior holding, *Camp Phosphate Co. v. Allen* ...." 194 So.2d at 589.

The remaining cases cited in the Opinion do not address the issues presented in this case. The Opinion cites no decision which reverses a trial court order denying a motion to strike jury trial demand. The Opinion cites not a single decision requiring that a trial court deny a request for jury trial in circumstances even remotely resembling those presented in this case. In this factual and legal context, the Court of Appeal erred in holding that the trial court was precluded from conducting a jury trial in this case.

CONCLUSION

For the foregoing reasons, Petitioner Section 3 Property Corporation respectfully requests that this Court enter an order reversing the District Court of Appeal's November 24, 1992, order

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and reinstating the trial court's May 19, 1992, order in full force and effect.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed to: Jay W. Williams, Assistant Dade County Attorney, 2810 Metro-Dade Center, 111 N.W. First Street, Miami, FL 33128-1993, this 29th day of January, 1993.

William A. Fragetta
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