SUPREME COURT OF FLORIDA

CASE NO. 81,602

DEPARTMENT OF REVENUE,

Petitioner,

vs.

THE PRINTING HOUSE, INC.,

Respondent.
_____/

BRIEF OF AMICUS CURIAE HONORABLE C. RAYMOND MCINTYRE, HIGHLANDS COUNTY PROPERTY APPRAISER, AND AS PRESIDENT OF THE PROPERTY APPRAISERS' ASSOCIATION OF FLORIDA

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PRELIMINARY STATEMENT

The Department of Revenue, petitioner herein, will be referred to as the "Department"; respondent, The Printing House, Inc., will be referred to herein as "The Printing House"; and the amicus curiae, C. Raymond McIntyre, Highlands County Property Appraiser and the Property Appraisers' Association of Florida, will be referred to herein as the "Appraisers' Association."

Where references are made to the case of Section 3 Property Corp. v. Joel W. Robbins, as Property Appraiser of Dade County, Case No. 80,952, presently pending in this Court, the petitioner therein will be referred to as "Section 3" and the property appraiser will be referred to as "Robbins." That case will be referred to as the "Section 3" case.

STATEMENT OF THE CASE AND OF THE FACTS

This Appraisers' Association adopts the Statement of the Case and of the Facts as stated by the Department in its initial brief.

SUMMARY OF ARGUMENT

This case, and the Section 3 case are both presently pending in this court on questions certified from the First and Third District Courts of Appeal, respectively, and involve essentially the same issue. The issue presented in both cases is whether the right to trial by jury obtains in tax cases under Florida law. The Appraisers' Association submits the right to

trial by jury does not apply in cases challenging the legality or amount of assessments or taxes under Florida law.

The right to trial by jury secured by the Florida Constitution applies to actions at law and thus the law jurisdiction of courts and does not apply in situations which involve the equitable jurisdiction of the courts. Florida law has long recognized that where the nature of the proceeding involves rights or remedies which are equitable in nature, there is no right to trial by jury. Actions which sound in and are premised on the equitable jurisdiction of the court are not protected within Article I, Section 22, Florida Constitution (1968), which guarantees the right to trial by jury. At common law, no right to trial by jury existed for cases involving the equitable jurisdiction of the courts and the common law was made a part of the law of the State of Florida by statute. Since challenges to imposition of taxes involved the equitable jurisdiction of the courts, no right to trial by jury exists.

ARGUMENT

The decision of the District Court of Appeal, First District, was incorrect in holding that the right to trial by jury was preserved by Article I, Section 22, Florida Constitution (1968), in actions challenging excise tax assessments under Chapter 72, Florida Statutes (1991), and the decision of the District Court of Appeal, Third District, was correct in holding that actions contesting ad valorem taxation are actions sounding in equity and

no right to trial by jury exists.

In the case of Hawkins v. Rellim Inv. Co., 110 So. 350 (Fla. 1926), this Court considered a complaint filed seeking to declare and enforce a trust in certain property described therein. By the pleadings, the constitutional validity of a 1925 legislative act was placed in issue on the grounds that the act violated section 3 of the Declaration of Rights ". . . . because it fails adequately to provide for a trial by jury." In discussing the right to trial by jury this Court stated at page 351:

> In construing section 3 of the Declaration of Rights and the Seventh Amendment to the federal Constitution, the courts hold that these provisions are designed to preserve and guarantee the right of trial by jury in proceedings, according to the course of the common law as known and practiced at the time of the adoption of the Constitution, and in neither case do they extend to or have any reference to equitable demands enforced in the courts of chancery. They cover a narrow field of litigation affecting private rights and are not applicable to remedies unknown to the common law. Hughes v. Hannah, supra; Blanchard v. Raines, 20 Fla. 467; Buckman v. State ex rel. Spencer, 34 Fla. 48, 15 So. 697, 24 L. R. A. 806; Wiggins v. Williams, 36 Fla. 637, 18 So. 859, 30 L. R. A. 754; Parsons v. Bedford, 3 Pet. 433 text 446, 7 L. Ed 732; Luria v. United States, 231 U.S. 9 test 27, 34 S. Ct. 10, 58 L. Ed. 101.

110 So. at 351.

Previously in Hawthorne v. Panama Park Co., 32 So.2d 812 (Fla. 1902), this Court addressed the requirements of right to trial by jury stating:

> Section 3 of the declaration of rights provides that "the right of trial by jury shall be secured to all and remain inviolate forever." This, however, guaranties to the

> citizen a right of trial by jury only in those cases where at the time of the adoption of the constitution the law gave that right; and not in those cases where the right, and the remedy with it, are thereafter created by statute, nor where the cause was already the subject of equity jurisdiction. Lavey v. Doig, 25 Fla. 611, 6 South. 259; Hughes v. Hannah, 39 Fla. 365, 22 South. 613; Buckman v. State, 34 Fla. 48, 15 South. 697, 24 L. R. A. 806; Wiggins v. Williams, 36 Fla. 637, 18 South. 859, 30 L. R. A. 754.

32 So. at 813.

Thereafter this Court considered the statute involved in that case stating:

> The statute under which this lien is claimed in section 1744 of the Revised Statutes expressly authorizes its enforcement by bill in equity or by proceedings at law. That statute creates a new right, unknown to the common law, and it was competent for the legislature to provide for the enforcement of that right either at law or in equity. Wiggins v. Williams, supra; Railroad Co. v. Bartola, 28 Fla. 82, 9 South. 853; Lumber Co. v. Keefe, 6 Dak. 160, 41 N. W. 743. In equity parties have not, and never had, an absolute right to a jury trial, and the provision of the constitution quoted does not guaranty such right. As the legislature had power to grant jurisdiction to courts of equity to enforce this new right created by it, and did not provide for a jury trial, the court of chancery has jurisdiction to enforce the lien as against the appellee in this case, according to the regular course of procedure in that court, without a jury, and the grounds of demurrer questioning that right were not well taken.

32 So. at 813.

These cases and the other authorities cited therein establish the principle that the constitutional right to trial by jury applies only in those cases where at the time of the adoption

of the constitution the law gave that right; and not to those cases where the right, and the remedy with it, are thereafter created by statute. These cases also point out that the constitutional provision protecting the right to trial by jury does not apply where the cause was already the subject of equity jurisdiction.

In Hawthorne, this Court held that the new statute created by the legislature established a new right unknown to the common law, and that accordingly, the legislature had the power to grant jurisdiction to courts of equity to enforce the new right created by it, without providing for a jury trial.

That which was formerly in section 3 of the Declaration of Rights, is now found in Article I, Section 22, supra. Under the 1885 Florida Constitution, circuit courts were conferred exclusive original jurisdiction in all cases in equity and ". . . . in all cases involving the legality of any tax, assessment, or toll . . . .". See Article V, Section 6(3), Florida Constitution (1885). Under the 1968 constitution circuit courts were conferred with ". . . . original jurisdiction not vested in the county courts, ...". See Article V, Section 5, Florida Constitution (1968). Under Article XII, Section 10, Florida Constitution (1968), all provisions of certain articles enumerated therein, which are not inconsistent with the 1968 revision, become statutes subject to modification or repeal as are other statutes. Article V, is not mentioned in said section 10. However, Article V, Section 20(3), Florida Constitution (1968) which replaced all of Article V, Florida Constitution (1885), again conferred on circuit courts

exclusive jurisdiction in all cases involving the legality of any tax assessment or toll, and this became effective January 1, 1973. Also see Section 26.012, Florida Statutes (1991).

Section 68.01, Florida Statutes (1991), refers to a tax challenge as "an action in chancery." Chapter 72, supra, which includes numerous tax matters is of more recent vintage and was enacted for the purpose of attempting to codify in one place the procedures for challenging certain state levies and assessments. Some confusion had existed after the enaction of the administrative procedure act of 1974 as to state excise tax disputes and after various and divergent decisions from the courts "wrestling" with the issue, the enaction of Chapter 72, supra, was in part aimed at clarifying the parameters of administrative jurisdiction and of circuit court jurisdiction. See Department of Revenue v. University Square, Inc., 336 So.2d 371 (Fla. 1st DCA 1976); Department of Revenue v. Young American Builders, 330 So.2d 864 (Fla. 1st DCA 1976); and State ex rel. Department of General Services v. Willis, 344 So.2d 580 (Fla. 1st DCA 1977). Chapter 72, supra, contains so specific legislative pronouncement that trial by jury may be obtained by demand.

The procedures for ad valorem tax challenges are now provided for in Section 194.171, Florida Statutes (1991), and Section 194.181, Florida Statutes (1991). At one time a jurisdictional prerequisite for filing suit in circuit court challenging an ad valorem assessment was the requirement that the aggrieved property owner must have exhausted his administrative

remedies and appealed to the board of equalization (board of tax adjustment, property appraisal adjustment board, and now value adjustment board). Although this is no longer a jurisdictional prerequisite, most aggrieved property owners do petition to this board for review of assessments made by the property appraiser which they feel to be incorrect or excessive.

The First District Court in this case quotes from an article authored by two attorneys which suggests that because of the language used in Section 194.171 when it was created in 1965, that this implies that a right to trial by jury exists in ad valorem tax cases. The Appraisers' Association disagrees with the analysis in the publication and the decision of the First District in this respect.

One way for a right to jury trial to exist is that it must have existed at common law. Neither this case nor Section 3 have referenced to authority for the contention that such a right existed at common law. It did not. The nature of assessments of both state taxes, such as the excise taxes, and the local ad valorem taxes, are that they are all forced charges or burdens. See Klemm v. Davenport, 100 Fla. 627, 129 So. 904, 70 ALR 156 (1930); and Kathleen Citrus Land Co. v. City of Lakeland, 124 Fla. 659, 169 So. 356 (Fla. 1936). In the area of excise taxes, the legislature fixes the circumstances or transactions which give rise to the imposition of the tax, and an administrative body, now the Department of Revenue in large part, performs the administrative task of calculating the amount of the tax due based on the

transactions identified by description by the legislature. In the field of ad valorem taxation, the taxes are imposed upon specifically named property (real property and tangible personal property), and each owner of such property is held to know that by virtue of his ownership of this type property he is required to pay taxes based on the value thereof. See Thompson v. City of Key West, 82 So.2d 749 (Fla. 1955) and Section 197.122, Florida Statutes (1991). Duly elected constitutional officers, the property appraisers, are charged with the duty of fixing a value on the property and then extending the millage certified to them by the various taxing entities within the county, so that the mathematical computation thereof results in the amount of the tax due based on the property. This tax is fixed by the legislature on the property, not on the owner thereof. It is in rem not in personam.

Once this amount of tax is calculated generally questions arising concerning the correctness of same center around matters which will not be factually in dispute. The primary function of the court then is to apply the law to the facts and circumstances in each case. Since the legislature has already fixed and determined the factual circumstances and transactions which give rise to the imposition of the tax, it could well be suggested that the legislature has imposed the tax through the enactment, and the only remaining function of the court is to assure itself that the transaction occurred and that the Department properly calculated the amount of the tax. Florida's excise taxes, such as the sales

and use taxes, did not come into being until 1950 and the first Florida constitution was adopted in 1845. At common law the tax structure was considerably simpler than at the present time because the objects of taxation were fewer and easier to identify. Taxes were imposed on property (real property and personal property), at some predetermined and fixed rate such as 25 cents per 100 acres or 5 cents for each 25 head of cattle, or on persons. A tax could be imposed based on the number of persons residing in the household at a fixed rate per person. Thus, the disputes were much simpler and easier to resolve.

In the ad valorem area Florida law had boards which consisted of the county commissioners sitting as the boards of equalization to review and equalize the taxes levied for the county against real and personal property. See Spooner v. Askew, 345 So.2d 1055 (Fla. 1976), and the discussion therein addressing the changes in the statute beginning in 1971 as to the duties and function of this board. In most instances then as now, the review boards were the final arbiter where ad valorem assessments were disputed.

Section 68.01 was similar to Section 196.01, Florida Statutes, as it existed until 1969. In 1969 there was a rewrite of the ad valorem tax laws and circuit court jurisdiction, previously set forth in Section 196.01, Florida Statutes (1967), was codified in Section 194.171, and for the first time the legislature added the words "in law" when stating that circuit courts shall have exclusive original jurisdiction of all matters relating to property

taxation. The First District and Printing House here suggest that this change demonstrated a legislative intent to alter the nature of the proceedings in circuit court from proceedings in chancery to proceedings at law with the concomitant right to jury trial. The Appraisers' Association suggests that this is incorrect. It should be noted that the circuit court retained the authority to enjoin the collection of the taxes if it found that such assessment was invalid in whole or in part and injunction is a pure equitable remedy. Similarly, had the court intended that trial by jury be afforded in such matters, it could easily have so stated but it did not. Thus, the question posed is two fold and may be stated as follows:

> 1. Did the change in the statute in 1969 indicate an intent that trial by jury could be had on demand; and
>
> 2. If trial by jury previously existed as has been suggested and argued by Printing House and Section 3, would the change in the statute in 1969 be constitutional?

With regard to the first question, had the legislature intended to create a statutory right attendant with right to trial by jury it could easily have said so. It did not. Furthermore, no new right was created. The right to challenge assessments in circuit court had existed in Florida law for many, many years so no new right was made to exist. Injunctive relief was still provided for in the 1969 tax law revision, in Section 194.211, Florida Statutes (1969). It had been previously provided for in 1967 in Section 196.02, .03, and .04, Florida Statutes (1967). Had the legislature intended to totally change the procedure for the trial

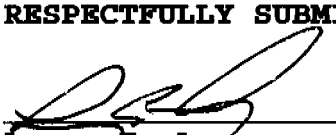
of tax cases it could easily have done so by specifying unequivocally in Section 194.171 and Chapter 72 that the right to trial by jury was available. It did not.

The most recent consideration of the right to trial by jury is found in this Court's decision of B.J.Y. v. M.A., 18 Fla. L. Weekly S265 (Fla. Apr. 30, 1993). Although it doesn't involve taxation, it does address the distinction between law and equity actions and the general principles set forth herein. Neither Chapter 72 nor Section 194.171 confer a right to a jury trial.

CONCLUSION

For the above and foregoing reasons the Appraisers' Association respectfully urges this Court that the decision of the Third District Court of Appeal is correct and that the decision of the First District Court of Appeal is incorrect and should be reversed.

RESPECTFULLY SUBMITTED,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to **LORENCE JON BIELBY, ESQUIRE, FRED F. HARRIS, ESQUIRE,** and **FRANCES M. CASEY, ESQUIRE,** Greenberg, Traurig, Hoffman, Lipoff, Rosen & Quentel, Post Office Drawer 1838, Tallahassee, Florida 32302 and **LISA M. RALEIGH, ESQUIRE** and **LEALAND L. McCHAREN, ESQUIRE,** Assistant Attorney Generals, Department of Legal Affairs, The Capitol - Tax Section, Tallahassee, Florida 32399-1050 on this the 28th day of June, 1993.

Larry E. Levy