O.A. 11-2-93 047

FILED
SID J. WHITE
OCT 11 1993
CLERK, SUPREME COURT
By _____ Chief Deputy Clerk

SUPREME COURT OF FLORIDA

CASE NO.: 82,303

LARRY FUCHS, as Executive Director of the Florida Department of Revenue,

Appellant,

vs.

KENNETH M. WILKINSON, Property Appraiser of Lee County, Florida,

Appellee.
_____/

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

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PRELIMINARY STATEMENT

Appellant, Larry Fuchs, as Executive Director of the Florida Department of Revenue, will be referred to herein as the "Department." Appellee, Kenneth M. Wilkinson, Property Appraiser of Lee County, Florida, will be referred to herein as "Appellee." This amicus, the Honorable C. Raymond McIntyre, Highlands County Property Appraiser, and as President of the Property Appraisers' Association of Florida, Inc., will be referred to herein as the "Appraisers' Association."

STATEMENT OF THE FACTS AND OF THE CASE

The Appraisers' Association does not dispute the Statement of the Case and Facts of the Department, and adopts the Statement of the Case and Facts of the Appellee.

SUMMARY OF ARGUMENT

The Appraisers' Association submits that the implementation of Amendment 10 should begin on January 1, 1994. When the voters approved the amendment in November, 1992, they certainly were referring to just value as reflected in the assessments on their homes at that time. The primary rule of construction should give effect to the will of the people recognizing the evil sought to be remedied by the amendment.

To allow an additional year for the Department to coerce

and "gouge" 5 or 10 percent more value from each residence in Florida is contrary to the precise purpose of the amendment, and allows the Department to perpetuate the exact evil the amendment is designed to halt; that is, uncontrolled increases in value falling on homesteads which Florida have long recognized are a protected class of property. See Article X, Section 4, and Article VII, Section 6, Florida Constitution (1968).

ARGUMENT

THE TRIAL COURT WAS CORRECT IN HOLDING THAT THE PROTECTIONS OR CAPS ON VALUE CONTAINED IN AMENDMENT 10 APPLY AS OF JANUARY 1, 1994.

At the general election on November 3, 1992, the following amendment to Article VII, Section 4, Florida Constitution (1968), was approved by the people of the State of Florida. It provides:

> HOMESTEAD VALUATION LIMITATION
>
> (c) All persons entitled to a homestead exemption under Section 6 of this Article shall have their homestead assessed at just value as of January 1 of the year following the effective date of this amendment. This assessment shall change only as provided herein.
>
> 1. Assessments subject to this provision shall be changed annually on January 1st of each year; but those changes in assessments shall not exceed the lower of the following:
>
> (A) three percent (3%) of the assessment for the prior year;
>
> (B) the percent change in the Consumer Price Index for all urban consumers, U.S. City

Average, all items 1967 = 100, or successor reports for the preceding calendar year as initially reported by the United States Department of Labor, Bureau of Labor Statistics.

2. No assessment shall exceed just value.

3. After any change of ownership, as provided by general law, homestead property shall be assessed at just value as of January 1 of the following year. Thereafter, the homestead shall be assessed as provided herein.

4. New homestead property shall be assessed at just value as of January 1st of the year following the establishment of the homestead. That assessment shall only change as provided herein.

5. Changes, additions, reductions, or improvements to homestead property shall be assessed as provided for by general law; provided, however, after the adjustment for any change, addition, reduction or improvement, the property shall be assessed as provided herein.

6. In the event of a termination of homestead status, the property shall be assessed as provided by general law.

7. The provisions of this amendment are severable. If any of the provisions of this amendment shall be held unconstitutional by any court of competent jurisdiction, the decision of such court shall not affect or impair any remaining provisions of this amendment.

(Emphasis added.)

The trial court found that since the amendment contained no effective date, it became effective, pursuant to Article XI, Section 5(c), Florida Constitution (1968), on the first Tuesday, after the first Monday in January, which date was January 5, 1993.

The pivotal issue before this court is the proper

interpretation of the following language from Amendment 10:

> (c) All persons entitled to a homestead exemption under Section 6 of this Article shall have their homestead assessed at just value as of January 1 of the year following the effective date of this amendment. This assessment shall change only as provided herein.
>
> 1. Assessments subject to this provision shall be changed annually on January 1st of each year; but those changes in assessments shall not exceed the lower of the following:
>
> * * * *

(Emphasis added.)

The Department contends that the language "shall have their homestead assessed at just value as of January 1 of the year following the effective date of this amendment", means that all homestead property must be assessed according to the constitutional requirements of just value as they exist prior to the amendment. The Department's argument contends that thereafter, Amendment 10 and the restrictions found therein would apply. Since the amendment became effective January 5, 1993, and since the first January 1 after the effective date would be January 1, 1994, the Department's argument continues that the restrictions and protections of Amendment 10 could only apply beginning January 1, 1995.

Appellee contends that the mandate in the amendment that all homesteads be ". . . . assessed at just value as of January 1 of the year following the effective date of this amendment." means that the protections and restrictions of Amendment 10 would apply effective January 1, 1994.

Amendment 10 contains no retroactive language or expression of intent that the restrictions found therein were to apply retroactive to January 1, 1992, which is tax day under Florida law. See section 192.042, Florida Statutes (1991). Assuming that Amendment 10 did contain an effective date such as that found in Article VI, Section 4, Florida Constitution (1968), which restricted the terms of cabinet officers then, it would have become effective on November 3, 1992, election day, and the first January 1 thereafter would have been January 1, 1993 and there can be no question but that the Amendment 10's restrictions would have applied as of that date. See Advisory Opinion to the Attorney General, 592 So.2d 225 (Fla. 1991). For a comparison also see In Re Advisory Opinion to Attorney General, 520 So.2d 284 (Fla. 1988).

When the amendment was approved by the electors in November, 1992, just value could only have been that as contemplated by the voters which would have been the present "just value" of all homestead property as fixed on January 1, 1992. That is the "just value" in force and effect when approved by the voters. Thus, to be "assessed at just value" as the term is used in (c) of amendment 10, to the voters meant that value in existence at the time of the election.

In 16 C.J.S. beginning at page 72 it is stated:

> The prime effort or fundamental purpose in construing a constitutional provision, is to ascertain and give effect to the intent of the framers and of the people who adopted it. The court, therefore, should constantly keep in mind the object sought to be accomplished by its adoption, and proper regard should be given to the evils, if any, sought to be

> prevented or remedied. Effect should be given to the purpose indicated by a fair interpretation of the language used, and that construction which effectuates, rather than that which destroys a plain intent or purpose of a constitutional provision, is not only favored but will be adopted.

16 C.J.S. at 72-77 (emphasis added). Amendment 10 had as its sole purpose and object remedying the evil of runaway property values which threatened the homestead, which is the core of the people of Florida.

Allowing the Department two years to attempt to "gouge" every possible dollars worth of value from homesteads, as the Department suggests in its brief certainly flies directly in the face of the object and purpose of the amendment. The threat to property appraisers of roll disapproval if residential properties are not increased 5 to 10 percent to comply with some convoluted statistical formula certainly has as its one goal, that of forcing an increase in residential property values: for instance, statistical review of 170 sales may result in the residential strata of a tax roll being measured at 96 percent of the department's value, but by using 30 in-depth samples and the highly subjective appraised value of each based in large part solely on the cost approach to value, the Department can lower that to 93 percent.

But, if in that 30 samples the Department found 3 parcels which had a pump house, a chain link fence, or a closed-in carport not depicted on the property appraiser's property record card it could consider these as "mistakes of fact" and adjust the 93

percent downward to below 90 percent which is unapprovable, by a percentage based on the Department's estimated value of the three missed "mistakes of fact," thus coercing property appraisers to reappraise all residences in strata 1 or have the roll disapproved. This is what the Department seeks through chapter 93-132, supra. See section 193.1142(2), Florida Statutes (1991) by adding thereto (b) which provides:

> (b)1. If an assessment is disapproved under paragraph (a) and the reason for the disapproval is noncompliance due to material mistakes of fact relating to physical characteristics of property, the executive director or his or her designee may issue an administrative order as provided in s. 195.097. In such event, the millage adoption process, extension of tax rolls, and tax collection shall proceed and the interim roll procedures of s. 193.1145 shall not be invoked.
>
> 2. For the 1993 and 1994 assessment rolls, the executive director or his or her designee may invoke subparagraph 1. without disapproving an assessment roll or portion of an assessment roll. This subparagraph shall not be applied to a county more than once. This subparagraph expires December 31, 1994.

Chapter 93-132, Laws of Florida, Section 3. The sole purpose of this addition was to coerce more value from residential property on the 1993 and 1994 assessment rolls. That is what the Department is asking this court to countenance by holding that the homestead protection does not "kick in" until 1995.

The Appraisers' Association suggests that the Department's circumvention of the will of the people should not be countenanced.

Although the main thrust of the Department's argument is

bottomed upon the four corners of the amendment itself, it also argues that it needs two years to insure that all homestead property is assessed at just value, suggesting that it is not assessed at just value now. Since 1982, every two years the Department has been conducting in-depth studies of the tax rolls of the property values of each county in Florida. See section 193.1142, Florida Statutes (1982) and thereafter. What the Department is actually seeking is additional time to attempt to "gouge" as much value as possible from homestead property in Florida before the Amendment 10's restrictions "kick in." The Department's position should be rejected for two reasons which are (1) the Department has been performing its job of reviewing assessment rolls for some 12 years now and certifying annually to the Department of Education a level of assessment based on its conclusion that the tax rolls are "at just value" and in substantial compliance with law; and (2) any attempt to "gouge" another 5 or 6 percent of value from homestead property should be frowned on. At the time the people voted on Amendment 10 they certainly felt strongly that their property was already assessed at or in excess of just value and that is the reason for the overwhelming support for the amendment. For the Department to attempt to circumvent the will of the people at this late stage is certainly improper.

The second reason asserted by the Department for postponing the implementation of Amendment 10 as long as possible, begins at page 19 of their brief wherein, in a footnote, they refer

to chapter 93-132, Laws of Florida, which they recommend as "a new and more accurate method of conducting" the Department's in-depth reviews of the assessment rolls. As explained previously, nothing could be further from the truth. In addition to that quoted previously, two other modifications were added to section 195.096, Florida Statutes (1991), one in 1992 by chapter 92-32, Laws of Florida, and the second in 1993 by chapter 93-132, supra. Neither actually modified or changed the law or the Department's function in reviewing tax rolls. Section 195.096(5), Florida Statutes (1991) provides:

> (5) It is the legislative intent that the Division of Ad Valorem Tax utilize to the fullest extent practicable objective measures of market value in the conduct of reviews pursuant to this section.

(Emphasis added). This provision has been in the law since 1981 but apparently not used by the Department although property appraisers throughout Florida insisted that it should be used and followed. Instead of relying on comparable sales and sales ratio studies where comparable sales were adequate, the Department had chosen to rely on its in-depth appraisals of a given number of parcels in a county in the residential strata, usually consisting of a 30 or 32 parcel study. An in-depth appraisal of a parcel of property is much more subjective and much more subject to error and the property appraisers had for a long time insisted that the Department follow section 195.096(5) and use assessment to sales ratio studies where adequate sales were available. The 1992 law, chapter 92-32, amended section 195.096(2)(c), Florida Statutes

(1991), by adding the following language:

> For purposes of this section, the division may use an assessment-to-sales-ratio study in conducting assessment ratio studies.

In 1993 subsection (c) was amended to read:

> (c) In conducting assessment ratio studies, the Division of Ad Valorem Tax must use a representative or statistically reliable sample of properties in tests of each classification, stratum, or roll made the subject of a ratio study published by it. For purposes of this section, the division shall rely primarily on ~~may use~~ an assessment-to-sales-ratio study in conducting assessment ratio studies in those classifications of property specified in subsection (3) for which there are adequate market sales. The department shall compute the median and the value-weighted mean for each classification or subclassification studied and for the roll as a whole.

The purpose of these amendments were to require the Department to rely primarily on sales if adequate market sales existed instead of the highly subjective and much criticized 30 parcel sample where a fee appraisal was performed on each sample in the 30 parcel residential strata. Actually this added nothing to the law which did not previously exist because at all times the Department was supposed to utilize "objective measures of market value in the conduct of reviews . . . .." Furthermore, section 195.096(2)(d), Florida Statutes (1991) provides and has so provided since 1982:

> (d) In the conduct of these reviews, the Division of Ad Valorem Tax shall adhere to all standards which the property appraisers are required to adhere.

(Emphasis added). Anyone with even the slightest knowledge of real estate appraisal knows that the market place is always the primary

place that an appraiser should look when appraising properties and the Department was supposed to have been adhering to the standards to which the property appraisers were required to adhere at all times. The difficulty which the property appraisers encountered was in making the Department do it.

So, contrary to the statement by the Department that the 1993 amendment created a new and improved study method, it only allowed the Department to try to coerce an increase in homestead property values statewide in 1993 and 1994. The requirement to use sales where available has always been the law.

The situation before the court is similar in many respects to that before this court in Ammerman v. Markham, 222 So.2d 423 (Fla. 1969). In that case, like here, this court considered a question involving homestead property. The 1885 Constitution had been amended and the 1968 Constitution became effective on January 7, 1969, which was six days after the exemption status of the involved property, condominiums and cooperative apartments was fixed by law. This court stated:

> The revised Constitution of 1968, Art. VII, § 6 of which grants homestead tax exemption to the plaintiffs' class was approved "by a majority of the qualified electors voting in an election" which was held in November, 1968. The Fla.Const. 1968 became effective on January 7, 1969, six days after the exemption status of the property was determined, and,
>
> * * * *

Prior to then, the legislature had enacted chapter 67-339, Laws of Florida, to implement the homestead exemption provisions of the new constitution so that owners of condominiums and cooperative

apartments could receive the benefit of homestead tax exemption for tax year 1969. The status of property, for ad valorem tax purposes, then as now, was fixed as of January 1, so since the new homestead exemption provisions did not take effect until January 7, 1969, the Broward County property appraiser had declined to grant homestead tax exemption to condominium and cooperative apartment owners for year 1969. Chapter 67-339, supra, had been made to take effect "on the first January 1, after" the amendment was approved by the electors, which occurred in November, 1968. Even though the new constitution, which the law implemented, which extended homestead tax exemption to condominium and cooperative apartments, did not become effective until January 7, the court held that the exemption could be granted for 1969.

At bar, the Department wishes to postpone the homestead valuation restrictions until 1995 instead of 1994. Amendment 10 was approved by the voters in 1992. The failure of the drafters to include an effective date should not thwart the will of the people by postponing its implementation over two years.

CONCLUSION

In summary, the questions squarely presented to this court is what does the phrase "assessed at just value on January 1 of the year following the effective date" mean in Amendment 10. At the time that the people voted on the amendment there can be no doubt but that they felt that the just value contemplated by the

amendment already existed at the time of the election. This being so, no different meaning could be purported to the language on January 5, 1993.

Respectfully submitted,

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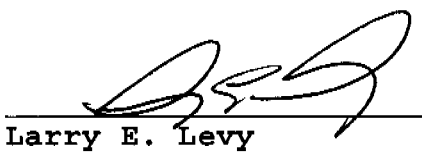
CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that a true and correct copy of the foregoing has been furnished by U. S. Mail to **JOSEPH C. MELLICHAMP, III**, Senior Assistant Attorney General, Department of Legal Affairs, Tax Section - The Capitol, Tallahassee, Florida 32399-1050 and **WILLIAM A. KEYES, JR.**, Stewart & Keyes, Post Office Drawer 790, Fort Myers, Florida 33902-0790; **MICHAEL C. TICE, ESQUIRE**, 2149 First Street, Fort Myers, Florida 33901; **GAYLORD A. WOOD, JR.**, 304 S.W. 12th Street, Fort Lauderdale, Florida 33315-1549; and **THEODORE L. TRIPP, JR.**, Garvin & Tripp, P.A., Post Office Drawer 2040, Fort Myers, Florida 33902 on this the 11th day of October, 1993.



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