ORIGINAL

SUPREME COURT OF FLORIDA

LEON COUNTY EDUCATIONAL
FACILITIES AUTHORITY and SRH, INC.,

Petitioners,

v.

BERT HARTSFIELD,
LEON COUNTY PROPERTY APPRAISER,

Respondent.

CASE NO, 87,769

ANSWER BRIEF OF BERT HARTSFIELD, LEON COUNTY PROPERTY APPRAISER

ON PETITION FOR DISCRETIONARY REVIEW
FROM THE FIRST DISTRICT COURT OF APPEAL
CASE NO. 95-1399

Ricky L. Polston ✓
Radey McArthur Polston & Frehn
101 North Monroe Street
Suite 1000, Monroe Park Tower
Post Office Drawer 11307
Tallahassee, Florida 32302
(904) 681-7766

Attorney for Bert Hartsfield,
Leon County Property Appraiser

Table of Contents

Table of Contents (Cont'd)

Table Of Citations

Table of Citations (Cont'd)

Statutes

Table of Citations (Cont'd)

Statement of Facts and Case

The statements of fact in the initial brief of petitioners Leon County Educational Facilities Authority (the "Authority") and SRH, Inc. ("SRH") and in the amicus curiae briefs misstate the parties' stipulation and mischaracterize the transaction at issue. The facts are these:

SRH, a private corporation that does not qualify as a tax-exempt entity but is instead fully taxable, holds title to the real property in Tallahassee, Florida, on which the Southgate dormitory project is located. (R-II at Stip. ¶¶ 2, 8).

SRH and the Authority have entered a "Lease With Option To Purchase" under which SRH is the lessor and the Authority is the lessee. (R-II at Stip. ¶ 2). As the title of the lease and the express terms thereof make clear, the Authority has an option to purchase the property if it so chooses. The Authority has not exercised the option. Contrary to the repeated assertions of amicus Lee County, this is not a "lease-purchase" agreement; it is a lease with option to purchase. Lee County's entire brief, which asserts the issue is the proper treatment of "lease-purchase" agreements (Brief of Amicus Curiae Lee County at 4), thus addresses some case other than the case at bar. The brief of amicus School Board of Volusia County similarly addresses transactions it has entered that are unlike the case at bar.

Contrary to the assertion by SRH and the Authority in their brief (see SRH and Authority's Initial Brief at 6), respondent Bert Hartsfield, Leon County Property Appraiser ("the Property

Appraiser") has never stipulated that SRH "has bare legal title only." Nothing could be further from the truth. In fact, the Property Appraiser has asserted from the outset that SRH has both legal and equitable title and that the Authority is merely the lessee (that is, has a non-ownership interest). (R-1-49-52, Property Appraiser's Motion for Summary Judgment, attached in the Appendix herein at tab A).

The Circuit Court, Second Judicial Circuit, Leon County ruled for the Property Appraiser, agreeing that the Authority is not the equitable owner of the property and that SRH, as the non-exempt owner, is fully taxable. (R-111-729-730, attached in the Appendix herein at tab B). The First District Court of Appeal affirmed without addressing the issue of whether the Authority is the property's equitable owner. Leon County Educational Facilities Authority and SRH, Inc. v. Hartsfield, 669 So. 2d 1105 (Fla. 1st DCA 1996) (attached in the Appendix herein at tab C).

Similarly incorrect is the assertion by SRH and the Authority that it is "uncontroverted" that the Authority has "full indicia of ownership." (SRH and Authority's Initial Brief at 29). In fact, SRH has "full indicia of ownership," including the right to lease the property to a lessee as it has done. The Authority has no "indicia of ownership"; the Authority is simply a lessee.

The parties made no stipulation regarding whether the Authority has equitable title. Instead, the parties strongly disagreed on this point. The claim (we submit erroneous) of SRH and the Authority is (and has been from the outset of this

litigation) that the Authority has equitable title and that the property is thus exempt. The position (we submit correct) of the Property Appraiser is (and has been from the outset of this litigation) that the Authority is merely a lessee, that the Authority does not have equitable title, and that SRH, as the one and only owner of the property and as an admittedly non-exempt entity, is fully taxable on the property it owns. (R-II at Stip. ¶ 6).

Based on his belief that the Authority clearly is not the equitable owner of the property at issue in this case, the Property Appraiser did not join issue with SRH and the Authority in the trial court below over whether property equitably owned by an exempt entity and used for exempt purposes could qualify for tax exemption. Rather than litigating that issue in the trial court, the Property Appraiser stipulated that if the Authority is indeed the equitable owner (an assertion the Property Appraiser believes is clearly unfounded), then the Authority as equitable owner would be exempt from taxation on that portion of the property used for exempt purposes.' (R-II at Stip. ¶ 7).

Although the First District Court of Appeal affirmed the trial court's ruling for the Property Appraiser that the Authority is not the equitable owner of the property, the First District went

---

[1] The parties have stipulated that use of property for a college dormitory is an exempt use. (R-II at Stip. ¶ 7). Parts of the property are used for ancillary services as to which the parties have reserved the right to disagree. Because of the rulings in the Circuit Court and District Court that the property is fully taxable, the issue of whether the ancillary services are an exempt use has not been addressed.

further than the trial court's decision. The First District stated that property is exempt under section 196.199, Florida Statutes, only if its legal title holder is an exempt entity, thus rendering the Southgate property taxable without regard to whether the Authority is the equitable owner. The First District certified its apparent conflict with an earlier Fifth District decision on this issue. SRH and the Authority have petitioned for review in this Court, and this Court has deferred the issue of jurisdiction pending briefing on the merits.

Summary of Armament

The parties now apparently agree that, as the Property Appraiser has said from the outset, property is exempt from ad valorem taxation only if there is both exempt ownership and exempt use. See SRH and Authority's Initial Brief at 20: "Appellants further agree . . . that all property in order to be exempt must be 'owned and used' for a public purpose by an exempt entity."

SRH, a private corporation, owns the property at issue. This is so because SRH is both the legal and equitable owner of the property. SRH is a taxable entity. As owner, SRH is subject to ad valorem taxation on the property it owns. The circuit court correctly so ruled. The First District also correctly so ruled: "Although we affirm, we deem it helpful to discuss appellants' second issue, asserting that the lower court erred in declining to find that the property LCEFA leases is exempt pursuant to section 196.199(1)(c), Florida Statutes (1993), for the reason that the

property is both owned and used by a governmental entity created by general law." 669 So. 2d at 1106 (emphasis supplied).

The Property Appraiser believes that SRH is clearly both the legal and equitable owner of the Property, that the Authority clearly has no ownership interest in the property legal or equitable, and that this Court thus should either (i) decline jurisdiction, (ii) affirm the First District's ruling without regard to the interesting - but in this case non-controlling - issue of whether ownership for purposes of the statutory exemptions at issue means legal or equitable ownership, or (iii) affirm the First District's ruling in its entirety.

SRH leases the property to the Authority, a tax exempt entity. This does not, however, exempt SRH from taxation on the property SRH owns. Property owned by a private, taxable entity and leased to an exempt entity is taxable, not exempt, regardless of whether the lessee uses the property for exempt purposes.

Any other rule would have a substantial and devastating effect on Leon County's tax base. Countless properties in Leon County are owned by private lessors and leased to the State of Florida or its political subdivisions. Such private lessors are taxable, not exempt, even when, as is commonplace, the governmental lessees are themselves tax exempt and use the property for governmental, i.e., exempt, purposes. SRH, as a private lessor, is no different.

The applicable statutes clearly require this result. The statutes begin by declaring all real property in this state subject to ad valorem taxation unless "expressly exempted." § 196.001,

Fla. Stat. (emphasis added). Exemptions must be strictly construed against the party claiming exemption. Neither § 196.199 nor § 243.33, the exemptions relied on by SRH, support its position.

First, § 196.199 applies by its plain terms to "[p]roperty owned and used" by specified "governmental units." The property at issue here is owned by SW, which is not a "governmental unit." Nothing in § 196.199 exempts SRH, as the private lessor of the property, from paying ad valorem taxes on the property it owns.

The Authority's lease does not make it the owner of this property. Although the lease gives the Authority the right to occupy and control the property to the extent set forth in the lease, this is no different from the control exercised by countless commercial lessees. The right to occupy and do business on the property and control its day to day operation is the very essence of any commercial lease; such terms do not create an ownership interest in the lessee.

This is confirmed by § 196.199(7), which provides that property leased for 100 years or more "shall be deemed to be owned" for purposes of § 196.199. This makes clear that property leased for less than 100 years is not deemed owned. Thus the Authority, with its much shorter lease, is not deemed the owner of this property. Nor does the Authority's option to purchase the property change this; under settled law, an option to purchase does not give any legal or equitable ownership in the property unless and until the option is exercised.

To be sure, § 196.199(1)(c) exempts, under certain conditions, government property "conveyed to a nonprofit corporation which would revert to the governmental agency." The Authority asserted below that this provision exempted this property from taxation. But the property at issue here has never been owned by the Authority, was not conveyed by the Authority (or any other governmental agency) to SRH, and would not and could not "revert" to the Authority. Under SRH's contrary construction, the word "conveyed" in the statute would be superfluous, and the word "revert" would be given a meaning contrary to its legal and common meaning of "to return or go back to." Under any reasonable reading of this provision, and most assuredly under the mandated strict construction, this language does not afford an exemption here.

Similarly unfounded is SRH's claim to an exemption under § 243.33, which affords to educational facilities authorities the tax exempt status of other governmental agencies. The section speaks not at all to SRH, which is not an educational facilities authority and remains taxable. Nothing in § 243.33 changes the law applicable to private owners who lease their property to governmental agencies. In this respect § 243.33 gives the Authority the same tax status, but no better tax status, than any other governmental entity created by statute.

Finally, SRH asserts that this is a complicated and sophisticated financing transaction that should enjoy favorable tax treatment. The parties - the Authority, SRH, and the institutional investor that holds the certificates of participation - chose for

reasons of their own to structure this transaction as they did. That structure, as the title and substance of the governing document make clear, is a lease with option to purchase. The parties apparently received favorable treatment under the federal tax laws based on the structure they chose. Having received the benefit, they must also suffer the burden of that structure. The burden is that under Florida law, the corporation that owns the property, SRH, is subject to ad valorem taxes.

Argument

I. THE COURT SHOULD DECLINE JURISDICTION BECAUSE THERE IS NOT AN EXPRESS AND DIRECT CONFLICT OF DECISIONS ON THE FACE OF THE OPINION

SRH and the Authority assert that this Court should accept jurisdiction because the First District entered "an opinion which is the exact opposite of the holding of the Fifth District in First Union Nat'l. Bank v. Ford, 636 So. 2d 523 (Fla. 5th DCA 1993) on substantially the same operative facts as summarized in Leon County at page 1106." (SRH and Authority's Initial Brief at 7, emphasis supplied)(First Union is attached in the Appendix within at tab D).

Jurisdiction under Art. V, § 3(b)(4) of the Florida Constitution and Fla. R. App. P. 9.030(a)(2)(vi) may be sustained only if there is a conflict of decisions appearing within the four corners of the majority decision. Department of Health and Rehabilitative Services v. National Adoption Counseling Service, Inc., 498 So. 2d 888 (Fla. 1986) (petition for review denied because there was no conflict; decision in the underlying action was based on lack of standing whereas other cases were decided on the merits).

Only facts recited in the opinions, and not those otherwise in the record, may be considered for determining jurisdiction based on alleged decisional conflict. Reaves v. State of Florida, 485 So. 2d 829, 830 n. 3 (Fla. 1986) (petition for review denied because there was no conflict on the face of the majority opinion).

SRH and the Authority do not dispute these rules of jurisdictional law (citing these same cases above), but do not reach these standards to invoke jurisdiction in this Court. The facts in First Union and Leon County as recited in the opinions are far from substantially the same. Accordingly, jurisdiction should be declined. Department of Revenue v. Johnston, 442 So. 2d 950 (Fla. 1983) (jurisdiction discharged where no conflict because facts in the cases were different).

SRH and the Authority cite numerous items in their brief that are not in the First District's opinion, plainly wrong, and cannot be used to support jurisdiction. For example, they state in their brief:

> The First District held that, although the indicia of ownershis, i.e., actual use, manasement and sossession of the property, is in a public entity, the property was not exempt from taxation because the mere legal title was held by a private non-exempt entity.
>
> . . .
>
> SRH therefore cannot be taxed for any interest in the Project because, of record, it does not have any beneficial ownership interest.
>
> . . .
>
> In both Leon County and First Union Nat'l Bank, legal title to the property is in a private entity and all the indices of euuitable and beneficial ownership are in a public, tax exempt entity. Whether immune or not, it is uncontroverted that these two sovernment entities are exempt as are their uses (administration building, dormitory) and properties.
>
> . . .

> The First District also expressly and specifically identified the virtually identical operative facts in both cases.

SRH and Authority's Initial Brief at 10, 15, 16, 17, emphasis supplied.

Nowhere in the First District's opinion did the court ever state that a public entity had indicia of ownership. Instead, the court stated:

> SRH, a nonexempt entity, holds title to the property and leases the facilities, improvements and equipment to [the Authority].

669 So. 2d at 1106.

For there to be a conflict between First Union and Leon County, there must be a finding in each case that the public entity is an equitable owner - just as SRH and the Authority suggest there is. Nowhere did the First District ever state that SRH had no beneficial ownership interest. Nowhere did the First District ever state that the Authority held a beneficial ownership interest. It in fact ruled otherwise by affirming the Circuit Court's ruling in favor of the Property Appraiser.

Contrary to the First District, the Fifth District explicitly concluded that the County was the equitable owner, and that the County "holds substantially all the burdens and benefits of ownership relating to the property sought to be taxed." 636 So. 2d at 524, 527. These very important facts on the face of the opinions are very different, not substantially the same.

At the end of the lease term, the Authority in the case at bar has the option to buy, but it is not compelled to exercise the

option. 669 So. 2d at 1106. However in First Union, the property will be conveyed to the County at the end of the lease. 636 So. 2d at 524.

The First District describes SRH as a "nonexempt entity," rather than as exempt as suggested by SRH and the Authority in their brief quoted above. 669 So. 2d at 1106. Nowhere in the First District's opinion does it (i) describe SRH as a governmental entity, (ii) describe immunity (although forming the basis of the holding in First Union, 636 So, 2d at 527), or (iii) indicate that it is uncontroverted that SRH and the Authority use the property for exempt purposes, all as suggested by SRH and the Authority in their brief quoted above.

A conflict of decisions, rather than opinions, is required for jurisdiction. Art. V, § 3(b)(4), Fla. Const.; Fla. R. App. P. 9.030(a)(2)(vi). There is no dispute that the First District expressed its view on First Union and its disagreement with the rule of law expressed therein. 669 So. 2d at 1106-09. However, the First District affirmed the trial court's ruling (that the Authority is not the equitable owner). That affirmance is its decision and is not in conflict with First Union. The First District's disagreement with the Fifth District as expressed in its opinion on the law does not affect the outcome of this case on the merits and does not rise to the jurisdictional requirement for a conflict of decisions rather than opinions. Niemann v. Niemann, 312 So. 2d 733, 734-35 (Fla. 1975) ("We have to look at the

decision, rather than a conflict in the opinion, to find that we have jurisdiction.")(Harding, Circuit Judge).[2]

This Court should decline jurisdiction. However, in the event it chooses to accept jurisdiction, the First District Court's affirmance of the trial court should be approved without deciding whether ownership for purposes of the statutory exemptions at issue means legal or equitable ownership.

II. SRH, TEE PRIVATE OWNER OF THE PROPERTY AT ISSUE, IS SUBJECT TO AD VALOREM TAXES ON THE PROPERTY IT OWNS

The fundamental rule is that all real property in the state is taxable unless expressly exempted. Thus § 196.001 provides:

> 196.001 Property subject to taxation.--Unless expressly exempted from taxation, the following property shall be subject to taxation in the manner provided by law:
>
> (1) All real and personal property in this state and all personal property belonging to persons residing in this state; and
>
> (2) All leasehold interests in property of the United States, of the state, or any political subdivision, municipality, agency, authority, or other public body corporate of the state.

---

[2] See generally Richey v. Town of Indian River Shores, 309 so. 2d 543 (Fla. 1975) (jurisdiction declined where interpretation was given that was neither central to the cause nor litigated by the parties).

§ 196.001, Fla. Stat. (1991) (emphasis added).[3] The property at issue in this case is "real . . . property in this state" and thus is "subject to taxation" unless "expressly exempted."

As is settled, exemptions must be narrowly construed against the party claiming the exemption. See, e.g., Sebrins Airport Auth. v. McIntyre, 642 So. 2d 1072, 1073 (Fla. 1994) ("Generally, all property is subject to taxation unless expressly exempt and such exemptions are strictly construed against the party claiming them"); Strauqhn v. Camp, 293 So. 2d 689, 695 (Fla. 1974) ("[T]ax exemptions must be strictly construed against the claimant"), awweal dismissed, 419 U.S. 891 (1974). The applicant for an exemption must show clearly its entitlement to the exemption. E.g., Volusia County v. Daytona Beach Racing & Recreational Facilities Dist., 341 So. 2d 498 (Fla. 1976).

A. The Statutory Exemptions for Property "Owned and Used" by Exempt Entities Do Not Apply to Property Owned by a Taxable Lessor and Leased to an Exempt Entity

The general provision governing exemptions is § 196.192, which provides in relevant part:

> 196.192 Exemptions from ad valorem taxation .--Subject to the provisions of this chapter:
>
> (1) All property owned by an exempt entity and used exclusively for exempt

[3] The critical date for purposes of this case is January 1, 1993. The 1991 statutes and 1992 supplement were in effect at that time and are cited in this brief. There have been no relevant changes since that time.

> purposes shall be totally exempt from ad valorem taxation.

§ 196.192 (emphasis added). As the plain language of this section establishes, property is exempt only if there is both exempt ownership and exempt use. Similarly, § 196.199, the exemption for government property, explicitly applies only to property "owned and used" by a governmental entity.

Accordingly, SRH, as owner of the property at issue, cannot properly claim a tax exemption based on the Authority's tax exempt status or the tax exempt use of the property. This is illustrated by Mastroianni v. Memorial Medical Center, Inc., 606 so. 2d 759 (Fla. 1st DCA 1992). There, Memorial Medical Center ("Memorial"), a tax exempt entity using property it owned for exempt purposes - the operation of a hospital - conveyed title to several floors of the hospital complex to two limited partnerships. The limited partnerships then leased the floors back to Memorial. Applying § 196.192, the First District Court of Appeal held the leased floors non-exempt, noting that property is exempt only if there is both exempt ownership and exempt use. 606 so. 2d at 765. Because the lessors, the limited partnerships, were not exempt entities, the property they owned was not exempt, notwithstanding its lease to an exempt entity for exempt use:

> [T]he owner must be an exempt entity even though the property on which the exemption is claimed is leased to a nonprofit corporation that provides direct medical services to patients in a nonprofit or public hospital.

Mnstroianni, 606 So. 2d at 765.

As the court explained in Mastroianni, prior to 1988 Florida law allowed an exemption based on exempt use alone. In 1988, however, the Legislature amended § 196.192 to make clear that property is exempt only if there is exempt ownership in addition to exempt use. The court said:

> We need look no further than the plain language of the amended statute itself to determine the legislative intent to limit the exemption from ad valorem taxation to only those properties owned by an exempt entity.

606 So. 2d at 763 (emphasis by the court).

The court went on to note that the legislative history of the 1988 amendments confirmed that the amendments were intended to change prior Florida law under which exempt use, even without exempt ownership, was sufficient to qualify for an exemption. Indeed, the 1988 amendments were enacted to overturn the ruling in Daniel v. T.M. Murrell Co., 445 So. 2d 587 (Fla. 2d DCA), review denied, 453 So. 2d 43 (Fla. 1984), a case similar to this case. In Daniel, the taxable owners of real property leased the property to a private school, which used it exclusively for educational purposes. The lease required the school to pay any ad valorem taxes assessed against the property. The trial court held that the property did not have to be titled in the name of the tax exempt entity – the educational institution – in order to be exempt from taxation. 445 So. 2d at 588.

On appeal, the property appraiser asserted that Florida's tax exemption statute, properly read in its entirety, requires that the educational institution itself hold legal title to the property

being put to tax exempt use in order for the exemption to apply. **445 so.** 2d at 588. The appellate court disagreed with the property appraiser and affirmed the trial court's ruling, holding that the exemption for educational use applied to the property regardless of legal ownership. **445 so.** 2d at 589. The legislature subsequently amended chapter 196 to overturn the ruling in Daniel by requiring both ownership and use. The legislative purpose was to protect local governments' tax bases, as expressly recognized in Mastroianni. **606 so.** 2d at 763.

As Mastroianni squarely holds, property owned by a non-exempt lessor is not exempt from taxation. **606 so.** 2d at 765. That the lessee is exempt and uses the property for exempt purposes does not qualify the property for exemption.

1. § 196.199 Applies Only to Property "Owned and Used" by the Government

Section 196.199 is entitled "Government property exemption." It applies to property "owned and used" by specified governmental entities, including entities such as educational facilities authorities. Section 196.199 begins by stating:

> 196.199 Government property exemption.-
>
> (1) Property owned and used by the following governmental units shall be exempt from taxation under the following conditions:
> . . . .

§ 196.199(1) (emphasis added).

SRH is not a governmental entity. The property at issue is not now, and has never been, owned by the Authority. SRH owns the

property. Thus § 196.199 does not apply to this property, as in Ocean Hishwav & Port Authority v. Page, 609 So. 2d 84 (Fla. 1st DCA 1992). There, citing § 196.199, the court held a private lessor subject to taxation on property leased to a tax-exempt port authority (a governmental entity) and used exclusively for exempt purposes. The First District Court said:

> [W]hile chapter 196 affords exemptions for certain leasehold interests in governmentally owned land, the chapter provides no similar exemption for privately owned property leased to a governmental entity.

609 So. 2d at 87 (footnote omitted).

SRH makes much of the Authority's possession and control of the property. But the essence of any lease is the lessee's right to use the property. The lessee in Mastroianni had total control of the property and operated a hospital there. Nothing in the First District Court's opinion suggests the lessors retained any right to control the property in any way, and indeed Florida law governing hospital operation probably would have precluded any significant involvement by the lessors in the hospital's operations. See, e.g., Fla. Admin. Code R. 59A-3.217 (authority to operate and control hospital vested in hospital's governing board).

Similarly, in Ocean Highway, the tax exempt lessee used the property "exclusively for exempt purposes," 609 So. 2d at 86; the lessor had no right to use the property at all. Nonetheless, in both Mastroianni and Ocean Highway, the lessors were taxable as the owners of the property.

Moreover, the section 196.199 exemption for government "owned and used" property expressly provides the circumstances under which property is "deemed" owned, and those conditions are not met here. See § 196.199(7), (9). As to leaseholds, § 196.199(7) explicitly provides that property originally leased for a period of 100 years or more is deemed owned by the lessee and taxed accordingly.[4]

In specifically listing the conditions under which a leasehold is deemed ownership for purposes of the government owned property exemption, the legislature excluded other conditions of deemed ownership. In contrast to the terms of the statute, the lease in this case is not for 100 years or more. Thus, the Authority is not deemed the owner under § 196.199(7).

This treatment of leases is hardly surprising. Legal ownership, that is, fee simple ownership of the title, is prominent in the tax exemption statutes. See e.g., § 196.295(1)-(2), Fla. stat. (1992) (property is exempt from taxation from and after the date that "fee title to property" is acquired by an exempt governmental unit); United States v. Unit J-3 Beachcomber Condominium, 810 F. Supp. 300 (S.D. Fla. 1992) (ruling that party's equitable interest in property could not be taxed because United

---

[4] In Williams v. Jones, 326 So. 2d 425, 436 (Fla. 1975), the court explained that the lessee with a leasehold interest in property for an initial term of 99 years or more (now 100 years or more) "may be considered to be the owner 'in fee simple' and the property subject to the lease shall be valued for tax purposes as all other property owned in fee simple." 326 So. 2d at 436. Leasehold interests of 100 years or more in land owned by the government in fee simple are to be valued as fee ownership. State Dep't of Revenue v. Gibbs, 342 So. 2d 562, 564 (Fla. 1st DCA 1977).

States had legal title to property and was immune from taxation). There is simply no statutory support for the Appellants' assertion here that SRH's ownership of the property should be ignored.

Acceptance of Appellants' claim that a lessee's control of property makes the lessee the equitable owner and the property therefore tax exempt would drastically change the law and would remove from the tax rolls a great deal of property in Leon County that has been assessed without controversy for years.[5]

2. A Lessee's Option to Purchase Does Not Make the Lessee the Owner for Purposes of Ad Valorem Taxation

In addition to its leasehold, the Authority has an option to purchase. This does not, however, affect the proper tax treatment of the property. It is settled that an option to purchase does not convey any legal or equitable ownership interest in the property.

The Authority's option is just that: an option. As Appellants admitted below and apparently admit here, the lease as in effect on January 1, 1993, provided no assurance that the Authority would ever exercise the option or acquire title to the property. The Authority was the lessee and had an option to purchase; the Authority was not the property's equitable owner.

---

[5] Appellants* assertion that the lease requires the Authority to pay any taxes assessed against SRH does not change the statutory requirements. Any such agreement by the Authority is a voluntary contractual undertaking that cannot relieve SRH of its duty to Leon County to pay taxes on the property SRH owns. Clauses requiring lessees to pay taxes are routine and do not affect ownership of the property.

This is confirmed by Gautier v. Lapof, 91 So. 2d 324 (Fla. 1956). The property at issue there was subject to a 99-year lease with option to purchase. The issue was whether the lessees, who actually exercised the option to purchase during the tax year at issue, were the equitable owners as of January 1 of that year, prior to exercise of the option. This Court held that the lessees did not become the equitable owners for tax purposes until they exercised the option:

> We held in Foxworth v. Maddox, 1931, 103 Fla. 32, 137 so. 161 that an option to purchase contained in a lease did not prevent the existence of the relationship of landlord and tenant, even where rent payments were to be applied on the purchase price if the option was exercised. In 32 Am.Jur., Landlord and Tenant, Sec. 300, it is stated that under a lease with option to purchase the relation of the parties is merely that of landlord and tenant until the owtion is exercised, and the tenant has no estate in the land beyond the lease until he elects to purchase.
>
> It seems clear to us that until an optionee exercises the right to purchase in accordance with the terms of his option he has no estate, either legal or equitable, in the lands involved.
>
> Nor do we know of any rule or reason which would cause a different result where an option is contained in a lease.
>
> We therefore conclude that the presence of the option in the lease qave the plaintiffs no estate. legal or equitable, in the demised lands beyond the leasehold estate created by the lease itself.
>
> . . . .
>
> Accordingly, we hold that an option to purchase contained in a lease, until exercised, affords no greater estate than conveyed by the lease itself and that when the

> option is exercised the optionee, becomes the equitable owner of the lands involved, as of the date the option is exercised and not before. The equitable estate does not relate back to the date of the option or the date of the lease containing the option.

91 so. 2d at 326 (emphasis added) (citations omitted); see also Mathews v. Kingsley, 100 So. 2d 445, 446 (Fla. 2d DCA 1958) ("An option contract is different from a contract to purchase and gives the optionee no equitable interest in the land until he exercises his option to purchase"); Warren v. City of Leesburg, 203 So. 2d 522, 526 (Fla. 2d DCA 1967) (option to purchase "does not vest the holder of such option with any interest, legal or equitable, in the land itself"; option "is strictly a contractual right, not a property right").

First Union National Bank v. Ford, 636 So. 2d 523 (Fla. 5th DCA 1993), is not to the contrary. There, the lessor was absolutely obligated, upon termination of the lease, to convey the property at issue to the lessee in fee simple. See 636 So. 2d at 524. Any attempt to read First Union more broadly as applicable to a lease without an absolute obligation to convey would run afoul of Mastroianni and Ocean Highway, supra. And any attempt to read First Union as applicable to an option to purchase rather than an absolute obligation to convey would run afoul of the Supreme Court's decision in Gautier. Thus First Union does not help the Appellants here.

First Union differs from the case at bar in other respects as well. The property at issue in First Union was donated by the prior owner for construction of a county office building, not

purchased by private entities as in this case. In order to protect its general bond rating and lower the interest rate to be paid for the project in First Union, the county adopted a financing arrangement under which legal title to the property was held by a bank, as trustee for certificate holders, for a reasonable fee established by competitive bid. Unlike in this case (where the lease is in default and has been since very early, giving the Authority occupancy only so long as the lessor forebears), in First Union neither the bank nor the certificate holders for which it was trustee had any prospect of ever owning any beneficial interest in the property. Also unlike in this case, the taxpayers in First Union established that there were no substantial and unearned fees paid to private interests at the outset; the county paid only the true cost of the project. Thus whatever might be said of the circumstances in First Union, the transaction in the case at bar is substantially different.[6]

---

[6] Counties, unlike educational facilities authorities, are political subdivisions of the state and thus immune, not merely exempt, from taxation. The First Union court distinguished Mastroianni and Ocean Highway on this basis. See also Department of Revenue v. Canaveral Port Auth., 642 So. 2d 1097 (Fla. 5th DCA 1994) (distinguishing First Union on this basis), review granted, 652 So. 2d 816 (Fla. 1995). Doubts are resolved in favor of immunity of counties (as involved in First Union), exactly opposite the presumption applicable to claims of exemption (as involved in this case). This is another reason First Union does not apply here.

In addition, the court in First Union misread the opinion in Ocean Highway as applicable only to § 196.192; in fact the court in Ocean Highway cited § 196.199 as well as § 196.192 and would have decided the case differently had § 196.199 meant what SRH now claims. The First Union court also overlooked the basic tenet of statutory construction that statutory provisions do not operate in isolation. Both by its own terms and when viewed as part of the

The parties chose, for reasons of their own, to structure this transaction as they did. As the title and substance of the governing document make clear, this transaction is a lease with option to purchase. The parties apparently received favorable treatment under the federal tax laws based on the structure they chose. Having received the benefit, they must also suffer the burden of that structure. The burden is that under Florida law, the corporation that owns the property, SRH, is subject to ad valorem taxes. Section 196.199, which applies to property "owned and used" by governmental entities, does not apply to property owned by SRH and leased to a governmental entity.[7]

B. The "Reverter" Provision in § 196.199(1)(c) Applies to Property Conveyed by a Governmental Entity to a Nonprofit Corporation That Would Revert to the Government, Not to Property that Was Never Owned by the Government and Will Not Revert to the Government

The exemption for property owned and used by governmental entities in section 196.199(1)(c) provides:

---

overall tax statutes, § 196.199 does not exempt SRH from paying taxes on the property it owns.

[7] Attempting to ignore the clear structure of the transaction - a lease with option to purchase - SRH asserts that this is a complicated and sophisticated financing transaction. The parties' financing mechanism cannot, however, change the substance of the real estate transaction or the statutory requirements for tax exemptions. In any event, the legislature demonstrated its intent regarding the effect of financing mechanisms on tax exemptions for government property by specifically excluding from taxation property funded through certain bond sources; the exception does not include certificates of participation such as those involved here. See § 196.199(7).

> All property of the several political subdivisions and municipalities of this state or of entities created by general or special law and composed entirely of governmental agencies, or property conveyed to a nonprofit corporation which would revert to the aovernmental agency, which is used for governmental, municipal, or public purposes shall be exempt from ad valorem taxation, except as otherwise provided by law.

(Emphasis added.)

By its plain terms, reversion in chapter 196 applies only to property owned by a governmental entity and "conveyed" to a not-for-profit corporation, which would revert to the governmental entity. SRH's contrary position would render the word "conveyed" as used in the statute superfluous and would give a strained and unnatural meaning to the word "revert." Properly read, the statutory use of reversion is consistent with the common meaning of the term as well as the legal definition: "Any future interest left in a transferor." Black's Law Dictionary 1186 (5th ed. 1979).

That the Authority is a lessee with an option to purchase does not bring it within this statutory provision. In a leasehold, the lessee holds a possessory interest and the lessor has the reversion interest. E.g., Burnette v. Thomas, 349 So. 2d 1208 (Fla. 2d DCA 1977); cf. Volusia County v. Daytona Beach Racing & Recreational Facilities Dist., 341 So. 2d 498 (Fla. 1976) (noting difference between leasehold and fee simple interest in real estate).

The property at issue here is owned by the private entity SRH. It has never been owned by the Authority, was not "conveyed" by the Authority or any governmental owner to SRH, and would not under any circumstances revert to the Authority.

simply put, the property cannot revert to the Authority because the Authority has never owned the property. Only SRH has a reversion interest under the facts of this case.[8]

c. The Tax Exemption in § 243.33 for Educational Facilities Authorities Does Not Apply to Private Entities Like SRH, Which Remains Taxable as the Owner of the Property

The Appellants also assert that they are entitled to an exemption under § 243.33. This is wrong.

Nothing in § 243.33 provides an exemption for a taxable entity such as SRH. That section, which is part of the statutes applicable to educational facilities authorities generally, provides:

> 243.33 Tax exemption. --The exercise of the powers granted by this part will be in all respects for the benefit of the people of this state, for the increase of their commerce, welfare and prosperity, and for the improvement of their health and living conditions, and as the operation and maintenance of a project by the authority or its agent will constitute the performance of an essential public function, neither the authority nor its agent shall be required to pay any taxes or assessments upon or in respect of a project or any property acquired or used by the authority or its agents under the provisions of this part or upon the income therefrom, and any bonds issued under the provisions of this part, their transfer, and the income therefrom, including any profit made on the sale thereof, shall at all times be free from taxation of every kind by the state, the county and by the municipalities

---

[8] In addition, § 196.199(1)(c) would apply only to a not-for-profit corporation qualifying for tax exemption. SRH does not qualify. See supra note 1.

and other political subdivisions in the state.
. . .

§ 243.33 (emphasis added).

This section makes clear that the Authority is an exempt entity and that its projects are exempt uses. The section speaks not at all to SRH, a non-exempt owner, or to the taxes that lawfully may be assessed against SRH. In effect, § 243.33 makes clear that the Authority has the same stature - and only the same stature - as the lessees involved in Mastroianni and Ocean Highway. SRH, like the lessors involved in those cases, is fully taxable on the property it owns, notwithstanding § 243.33.

This analysis is confirmed by Jones v. Life Care of Baptist Hosnital. Inc., 476 So. 2d 726 (Fla. 1st DCA 1985), review denied, 486 So. 2d 596 (Fla. 1986). There, a county health facilities authority was established under chapter 154, Florida Statutes. The authority issued revenue bonds to acquire and construct a health facility. The facility was built on land owned by a not-for-profit corporation. The property was leased to the authority, then subleased back to the corporation.

The property appraiser assessed taxes against the corporation as owner of the property. 476 So. 2d at 727. The corporation challenged the assessment, asserting that it was due an exemption under section 154.233, a provision analogous to § 243.33. The trial court entered summary judgment in favor of the corporation, but the First District reversed, ruling that § 154.233 exempted only the authority, not the lessor, from ad valorem taxation:

> [T]he Authority is merely the lessee and sublessor of the property. Accordingly, the summary judgment cannot be sustained on the basis of a tax exemption granted to the Authority for property owned by it.

Jones, 476 So. 2d at 728.

The same result is appropriate here. Section § 243.33 here, like § 154.233 in Jones, exempts the governmental authority from taxation but is not applicable to a non-governmental owner that leases its property to the authority.[9]

It is a basic principle that statutory sections providing for tax exemptions do not operate in isolation. See, e.g., Mastroianni v. Memorial Medical Center, Inc., 606 So. 2d 759, 764 (Fla. 1st DCA 1992); Jones v. Life Care of Baptist Hosp., Inc., 476 So. 2d 726 (Fla. 1st DCA 1985), review denied, 486 So. 2d 596 (Fla. 1986). Section 243.33, both by its own plain terms and when considered in light of the overall structure of the tax statutes, exempts only the Authority, not SRH, from taxation. SRH remains taxable on the property it owns.

---

[9] Appellants assert that the Authority is immune, not merely exempt, from taxation. Even if true, this would not matter, because SRH, not the Authority, is being taxed. In any event, § 243.33 by its plain terms makes clear that the Authority is tax exempt, not immune. Compare Sarasota-Manatee Airport Auth. v. Mikos, 605 So. 2d 132, 133 (Fla. 2d DCA 1992) (noting that legislature designated airport authority a political subdivision within meaning of government property tax exemptions under § 196.199) with Department of Revenue v. Canaveral Port Auth., 642 so. 2d 1097, 1100 (Fla. 5th DCA 1994) (distinguishing Sarasota-Manatee on basis that port authority was not designated a political subdivision of the state), review granted, 652 So. 2d 816 (Fla. 1995). Educational facilities authorities were not expressly designated political subdivisions. See ch. 243 pt. II.

SRH is a private owner of property that is subject to ad valorem taxes as described above. The Court need not decide whether ownership for purposes of the statutory exemptions at issue means legal or equitable ownership. However, in the event the Court decides that issue, the Property Appraiser supports the First District's ruling requiring legal ownership for exemptions under sections 196.192 and 196.199.

III. EXEMPTIONS UNDER SECTION 196.192 AND 196.199 ARE AVAILABLE ONLY TO PROPERTY OWNERS WITH LEGAL TITLE

The Property Appraiser stipulated in the trial court that "in the event LCEFA rthe Authority] is determined to have been the eauitable owner of the Southgate Prowerty as of January 1. 1993, then that portion of the Southgate Property used for exempt purposes during the period of LCEFA's equitable ownership was exempt from ad valorem taxation." (R-II at Stip. ¶ 7, emphasis supplied). The trial court did not rule that the Authority was an equitable owner and in fact ruled to the contrary in favor of the Property Appraiser. The First District affirmed the trial court's ruling. The First District did not rule that the Authority was an equitable owner. The opinion by the First District that legal title is required and equitable ownership does not matter under the exemption statutes was not addressed by the parties' stipulation. The Property Appraiser did not address in the trial court the legal title issue addressed by the First District's opinion because it was unnecessary - the Authority is not the equitable owner.

To obtain an ad valorem taxation exemption under § 196.192, the property must be owned by an exempt entity and used exclusively or predominately for exempt purposes. § 196.192(1)-(2). Section 196.012(1) defines use for exempt purposes by reference to use of property for educational, literary, scientific, religious, charitable, or governmental purposes.

In making the determination of whether the property is entitled to an exemption for a charitable, religious, scientific, or literary purpose, the following statutory provisions apply:

> (1) In the determination of whether an applicant is actually using all or a portion of its property predominately for a charitable, religious, scientific, or literary purpose, the following criteria shall be applied:
>
> (a) The nature and extent of the charitable, religious, scientific, or literary activity of the applicant, a comparison of such activities with all other activities of the organization, and the utilization of the property for charitable, religious, scientific, or literary activities as compared with other uses.

§ 196.196, Fla. Stat. (1991) (emphasis supplied). It is clear from the language in this section that the use of the property by the "applicant" determines whether the property is used for an exempt use. See also § 196.195, Fla. Stat., containing numerous references to activities by the "applicant" to determine whether the entity is exempt and is used for an exempt purpose.

The "applicant" refers to the applicant for an exemption from taxation in § 196.011, "who, on January 1, has the lesal title to real or personal property." § 196.011, Fla. Stat. (1992) (emphasis supplied). Generally, an annual application is required for an

exemption from taxation. The applicant must have legal title. Id.

An exemption from taxation pursuant to § 196.192 is available to those "applicants" who qualify as an exempt entity and use property for an exempt purpose. The "applicants" are required to have legal title. It follows then that only those with legal title may obtain an exemption pursuant to § 196.192.

SRH and the Authority analyze § 196.011(1) in detail, which states:

> Every person or organization who, on January 1, has the legal title to real or personal property, except inventory, which is entitled by law to exemption from taxation as a result of its ownership and use shall, on or before March 1 of each year, file an application for exemption with the county property appraiser, listing and describing the property for which exemption is claimed and certifying its ownership and use. . . .

Section 196.011(1), Fla. Stat. (1992). SRH and the Authority argue that the use in this section of the phrases "which is entitled by law to exemption from taxation" and "its ownership and use" refers to the property rather than the applicant. (SRH and Authority's Initial Brief at 21-22). The Property Appraiser agrees with that interpretation of the section, but not with the conclusion reached by SRH and the Authority that legal title is not required.

SRH and the Authority state that "[t]here is no language in this statute that requires the exempt entity to be the applicant and the First District Court is wrong in concluding and holding otherwise." (SRH and Authority's Initial Brief at 22, emphasis in original). The First District Court did not interpret § 196.011(1) in the manner suggested by SRH and the Authority, rather stated

that the various statutes on the same subject must be read in pari materia. 669 So. 2d at 1108. As described above, a proper construction of sections 196.192, 196.195, 196.196, and 196.011 together indicates that an exemption pursuant to § 196.192 is available only to legal titleholders.

SRH and the Authority agree that sections 196.192 and 196.199 should be read in pari materia and that a "proper construction of both statutory provisions leads to the 'inevitable conclusion' that all property in order to be exempt must be 'owned and used' for a public purpose by an exempt entity." (SRH and Authority's Initial Brief at 20). SRH and Authority do not take issue over whether sections 196.192 and 196.199 should be treated the same, rather they argue against requiring "a finding of legal title held by the applicant(s) in order for the express statutory exemption to be granted." Id.

Treating sections 196.192 and 196.199 the same leads to the conclusion, under the statutory construction described above, that legal title is required as the First District Court of Appeal stated.

Moreover, a review of the most common exemption from ad valorem taxation - homestead exemption - indicates that legal title is required under sections 196.192 and 196.199. SRH and the Authority wrongly state:

> Because the adjective "legal" does not appear in any other applicable statutory exempting provisions, the only legally authorized inference is that all of the omissions should be understood as actual exclusions.

(SRH and Authority Initial Brief at 23, emphasis in original).

The homestead exemption includes both a reference to legal title and equitable ownership:

> Every person who, on January 1, has the legal title or beneficial title in equity to real property in this state and who resides thereon and in good faith makes the same his permanent residence, or the permanent residence of another or others legally or naturally dependent upon such person, is entitled to an exemption from all taxation, except for assessments for special benefits, up to the assessed valuation of $5,000 on the residence and contiguous real property, as defined in s. 6, Art. VII of the State Constitution.

Section 196.031, Fla. Stat. (1992) (emphasis supplied).

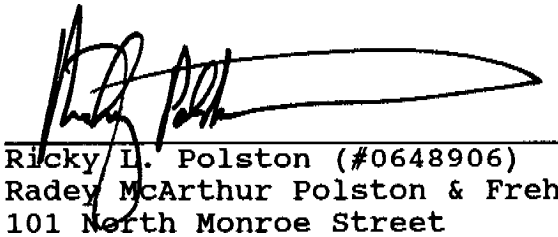
When the legislature intends to exclude equitable ownership, it knows how, just as the First District Court stated. 669 So. 2d at 1109 ("Obviously if the legislature had intended to exempt equitable ownership of property, it could have easily so provided in subsection (7) of this statute."). The legislature exempted equitable ownership in homestead exemptions, but chose not to in sections 196.192 and 196.199.

Both legal title and beneficial title in equity are included for subjecting property to taxation pursuant to § 196.001. The exclusions are limited to those "expressly" exempted. The court in First Union recognized that taxing equitable owners is well-established. 636 So. 2d at 525. The Property Appraiser agrees. However, the Fifth District then stated that it is "just and equitable" to apply the same rules for equitable ownership to exemptions. Id. This view is contrary to the statute requiring "express" exemptions.

Conolusion

SRH is a taxable entity. SRH leases property it owns to the Authority, a tax exempt governmental entity. A taxable lessor does not become tax exempt by leasing to a governmental entity. The trial court and First District properly so ruled. This Court should (i) decline jurisdiction, (ii) affirm the trial court's judgment as affirmed by the First District without deciding the legal issue of whether ownership for purposes of the statutory exemptions at issue means legal or equitable ownership, or (iii) affirm the First District's ruling in its entirety.

Respectfully submitted,



Ricky L. Polston (#0648906)
Radey McArthur Polston & Frehn
101 North Monroe Street
Suite 1000, Monroe Park Tower
Post Office Drawer 11307
Tallahassee, Florida 32302
(904) 681-7766

Attorney for Bert Hartsfield,
Leon County Property Appraiser

certificate of Service

I certify that a copy hereof has been furnished by mail to Mr. Richard E. Benton, 3837-A Killearn Court, Tallahassee, Florida 32308; Mr. Kenza Van Assenderp, Young, Van Assenderp & Varnadoe, P.A., 225 South Adams Street, Tallahassee, Florida 32302, attorneys for Leon County Educational Facilities Authority and SRH, Inc.; Mr. Larry E. Levy, The Levy Law Firm, Post Office Box 10583, Tallahassee, Florida 32302, attorney for Property Appraisers' Association of Florida, Inc.; Mr. Elliott Messer, Mr. Kimberly L. King, Messer, Caparello, Madsen, Goldman & Metz, P.A., 215 South Monroe Street, Suite 701, Post Office Box 1876, Tallahassee, Florida 32302-1876, attorneys for Escambia County Property Appraiser; Mr. Robert L. Nabors, Ms. Sarah M. Bleakley, Ms. Kimberly L. Franklin, Nabors, Giblin & Nickerson, P.A., Barnett Bank Building, Suite 800, 315 S. Calhoun Street, Tallahassee, Florida 32301-1838; Mr. James G. Yaeger, County Attorney, Lee County, 2115 Second Street, 6th Floor, Ft. Myers, Florida 33901; attorneys for Lee County; and Mr. C. Allen Watts, Cobb Cole & Bell, Post Office Box 2491, 150 Magnolia Avenue, Daytona Beach, Florida 32115-2491, attorneys for The School Board of Volusia County, this 21st day of August, 1996.

Ricky L. Polston