SUPREME COURT OF FLORIDA

LEON COUNTY EDUCATIONAL FACILITIES AUTHORITY, ET AL.,

Petitioners,

vs.

BERT HARTSFIELD, ETC.

Respondent.

* * * * * * * * * * * * * * * * * *

CASE NO. 87,769

District Court of Appeal, 1ST District - No. 95-1399

AMENDED REPLY BRIEF OF APPELLANTS LEON COUNTY EDUCATIONAL FACILITIES AUTHORITY and SRW, INC.

On Appeal from:
The District Court of Appeal
First District
Case No: 95-1399

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project.

E. Although arguably the Leon County Educational Facilities Authority as a dependant special district created and established by and pursuant to general law is a political subdivision and possesses immunity from taxation, the operative language of both the First District and Fifth District cases does not hinge upon immunity, but rather, upon exemption law centering on 1) indices of ownership **and** 2) whether they are found on the facts of a given case in the entity that has legal title or otherwise.

Summary of Argument

Appellee has misapplied the facts to the applicable jurisdictional law and procedure. Essentially the conflict of decision is that on the same operative facts, the two courts reached opposite conclusions of law.

The fundamental and only issue in this case is whether, when the property and project are for an exempt public purpose, and when the lessee is an exempt entity and the lessor is a non-exempt entity, the term "owned and used" means expressly and only use by the entity that has legal title. Appellants submit that the answer to that question is **"no".** The only instances this question has arisen in the State of Florida are in the Fifth District and First District, which certified the conflict to this court. The question is not whether an exempt lessee uses exempt property for exempt purposes but whether, regardless of the nature of the lease, in which party does sufficient indicia of ownership exist?

There is no need under the law to determine whether the

interest of the Authority, as lessee, is that of an equitable owner, a lessee with option to purchase or a lessee pursuant to a lease-purchase agreement. The only legal inquiry for purposes of exemption from property taxation, based upon both ownership and use, is whether the exempt entity has sufficient indicia of ownership to meet the "ownership" prong of the test. For purposes of tax exemption law, legal title, without indicia of ownership, does not constitute ownership under the law of property tax exemption in Florida.

Argument

I. The court should accept jurisdiction on the certified conflict because of the express and direct conflict of decisions on the face of both the First District and Fifth District opinions.

The parties agree on all applicable constitutional, appellate rules and case law governing certified conflict jurisdiction. Respondent Hartsfield argues that the conflict recognized by the Fifth District in its decision in Leon County Educational Facilities Authority and SRH, Inc. v. Hartsfield, 669 So. 2d 1105 (Fla. 1st DCA 1996), and the Fifth District's decision in First Union National Bank v. Ford, 636 So. 2d 523 (Fla. 5th DCA 1993), are not a direct conflict in spite of the fact that the First District expressly certified the conflict. Respondent Hartsfield argues that there can be no conflict since the First District did not expressly find that the authority had a beneficial ownership interest. Answer Brief at 11.

The First District Court of Appeal, however, recited the facts surrounding financing of the facility in question and the legal title by SRH and lease to the Authority. Leon County, 699 So. 2d at 1106. The Court acknowledged SRH's and the Authority's argument that "because SRH, as lessor, was created solely to finance the acquisition of the project property and retains only passive, legal title to the property, and the Authority, as lessee, has active, equitable and beneficial ownership of same, and the leased property is being used for a governmental, public purpose, it was exempt from ad valorem property taxation pursuant to section 196.199 (1)(c)." The Court then took great pain in setting out the

operative facts in the First Union case, which "involv[ed] a lease very similar in its terms to that in the case at hand." Id. The Court noted that in First Union the Fifth District concluded "that the lessee's equitable ownership of the property was sufficient indicia of ownership for acquisition of an exemption." Id. at 1106-1107 (emphasis added).

Hartsfield misses the true nature of the conflict which the First District certified. The conflict in question is not whether **there were** indicia **of equitable ownership in one case and not the other, as implied by Respondent's Answer Brief. The conflict in decisions is whether, given very similar leases and facts, the indicia of ownership of the property in question in the lessee is sufficient to exempt the property in question from taxation.**

In First Union, the Fifth District found that the equitable ownership of the property by an exempt governmental agency was sufficient to exempt the property from taxation. **636 So.3d at 527.** The Fifth District distinguished Ocean Highway & Port Authority V. Page, 606 So.2d 759 (Fla. 1st DCA **1992)** and Mastroianni V. Memorial Medical Ctr., 606 So. 2d **759 (Fla. 1st DCA 1992)** ***(Sea* Brief page 11 - 12).** In the case at hand, the First District Court expressly disagreed that, given the facts, a different result than that in Ocean Highway and Mastroianni should result. Leon County, 669 So. 2d **at 1107.** The First District held that the indicia of equitable ownership, considered to be sufficient for an exemption in First Union, is not sufficient for the property to be **exempt.** Indeed, the First District expressly stated that it declined to follow the

Fifth District's holding in First Union. Id. at 1109. In reaching its conclusion the Court expressly noted that "equitable ownership was not expressly referenced in Section 196.199(7), Florida Statutes, and that the legislature could have so provided." Id. Although Petitioners disagree with the construction of Section 196.199(7) as discussed in Section II of their Brief, this statement confirms that, in its opinion, the First District held that the indicia of ownership in the lessee (equitable interest) under these facts, as well as those in First Union are insufficient for the property to be exempt.

The conflict between the court's decision below and the Fifth District's decision in First Union is direct, express and falls within the four corners of the First District's opinion. The First District recognized this conflict and correctly certified the conflict to this court. Accordingly, this court should take jurisdiction and resolve this conflict between the Districts.

Argument

11. Mere legal title, without any evidence or determination of record of any indicia of ownership (retention of sufficient rights and duties), does not constitute legal ownership for tax purposes, while retention of sufficient rights and duties constituting indicia of ownership in an exempt lessee entity for exempt public purposes constitutes ownership and use under Florida law related to exemption from property taxes.

Essentially, as discussed in detail in their Initial Brief, Appellants maintain, in contrast to the misapplication of the law by Appellee in its Answer Brief, as follows:

1. The exemption in this case applies whether there is or is not immunity in the Leon County Educational Facilities Authority as

a dependant district. Any determination whether the Authority is or is not immune has no bearing on the determination of exemption. Moreover, contrary to the assertion of Appellee, the Fifth District First Union case does not base exemption on immunity of the tax exempt lessee, Brevard County, as a political subdivision. In fact, the Fifth District specifically said that the county did retain sufficient rights and duties regarding the realty and its improvements as lessee to constitute ownership for purposes of exemption from property tax, at page 524 and 527. These determinations have nothing to do with immunity. The Fifth District simply said in First Union that, absent a waiver in the State Constitution itself, which does not exist, Brevard County did not need to qualify for statutory tax exemptions pursuant to law because the Legislature lacks the power to tax it by passing statutes, at page 525. To state that an entity which is immune does not need to apply for an exemption does not mean that the Fifth District opinion was based on immunity. The Fifth District opinion went to great length to discuss the law of tax exemption when a tax exempt government entity is a lessee with full indicia of ownership, both rights and duties, in the exempt property for an exempt public purposes. The Fifth District would not have gone to such great lengths, were the decision in any way bottomed upon the law of immunity. Moveover, the First District also recognizedthat the Fifth District decision was not based upon immunity. When summarizing the Fifth District discussion of the law of exemption, the First District, at page 1107, used the term "moreover" when

discussing the notion of immunity. This language means that the First District court recognizes, as do Petitioners, that the determination of exemption in the Fifth District has nothing to do with immunity. Whether the Leon County Educational Facilities Authority is immune, and Petitioners assert that as a special district under §1.01(8), the Authority is so immune, does not relate to the law of exemption. First Union and this case are one of tax exemption.

2. Whether traveling under 5243.33, Fla. Stat., or any of the subsections in Ch. 196, Fla. Stat., the law of Florida is clear: exemption must be based upon ownership and use. In the instant case, the Appellants are travelling under both of these two separate statutes, both of which are based upon ownership and use for tax exemption. Either statute applies.

3. Lessor SRH, Inc. is a non-exempt entity and has bare naked passive legal title. Where the parties disagree is whether SRH, Inc. has any indices of ownership so as to constitute legal or equitable ownership for purposes of taxation. Taxation is not based upon title under the statutory scheme, but rather, ownership and use. Title is required for filing an application, but not for showing the basis for an exemption under the express terminology of Florida statutory law.

4. Appellee is so afraid of the glaring truth of exemption in the case of the Leon County Educational Facilities Authority (because of its possession of the full indicia of rights and duties of ownership), that it has sought to fabricate and fictionalize the

alleged ownership interests of the private, non-exempt SRH, Inc. and to separate this fabrication from the reality it fears, to wit, the "interesting" issue of "whether ownership for purposes of the statutory exemptions at issue means legal or equitable ownership" at page 5 of the Answer Brief of Appellee. As reflected on the record, the parties did stipulate that if the Authority is the equitable owner, then the Authority is exempt from taxation in that portion of property used for exempt purposes (R-II at Stip., paragraph 7). However, the operative law is not *to* determine the nature of equitable ownership; rather it is to identify the full indices of ownership and determine whether they are assigned to the lessee or lessor. This point was discussed at length in First Union by the unanimous tribunal beginning at page 523, where the Fifth District court pointed out that the trial court ruled Brevard County had only a "leasehold interest" and was not the "equitable owner", the same point attempting to be made by Respondent in Leon County. The Fifth District, at pages 523 and 524, went at great length to discuss the full indicia of rights and duties constituting ownership in the lessee. As a result of this detailed review the Fifth District Court, at **page 524, did** conclude that the County had retained sufficient rights and duties regarding the realty and improvements to make it the equitable owner. Similarly, the First District, at pages 1106 and 1107, took great length to set forth the same operative facts regarding the Leon County Educational Facilities Authority as existed from its lease as those which existed in Brevard County from its lease. The First District

would not have done to if it had not believed that the operative facts were identical for purposes of certifying decisional conflict.

Nowhere in either the First or Fifth District case is there any determination that anything other than the enumerated indicia of ownership are required. Neither case hinges on the determination of whether there was or was not equitable ownership and its specific characteristics. Both the First District and Fifth District cases are based upon a factual determination of sufficient indicia of ownership in the lessee to constitute equitable ownership. Had these indicia been in the holder of legal title, than that holder would have legal ownership under tax exemption law. Both cases are based upon a determination that the exempt lessee, a County and a County Authority, did have sufficient indicia of ownership to constitute equitable ownership.

5. The operative distinction between the First and Fifth district courts, unanimously by both tribunals, is not whether there was equitable ownership in both the Brevard County and in Leon County as exempt government lessees for public purposes, but rather on the law question whether statutory law requires ownership and use to be based expressly, only and exclusively on legal title, at page 1108 in Leon County.

The First District stated that the intent of the Legislature is "to tax all property, notwithstanding its use for a public purpose if its legal ownership remains in a non-exempt entity", at page 1108. **Petitioners submit respectfully that this statement by**

the learned First District tribunal is wrong. In fact, by its own terminology, the First District is not sure of its expressed proposition and felt compelled to add language attempting to explain a way the inherent problem in its incorrect summary of the law, by stating that "[A]lthough the amendment to section 196.192 did not expressly state that the owner must have legal title to the property sought to be exempted, we think it clear from a review of the legislative history and an examination of current Florida Statutes on the same subject which pre-date the amendment that the Legislature could not have reasonably contemplated any type of ownership other than legal ownership." (Emphasis supplied). This statement is extremely weak and discloses the inherent problem with the gravamen of the First District attempt to defend its earlier line of cases in the light of this incorrect characterization of the law and its legislative history. Because all exemptions must be express, as set forth in §196.001, Fla. Stat., and since the exemption expressed by the Florida Legislature is one of "ownership and use", not one of "legal title and use", the First District is wrong. This matter is discussed at great length by Appellants in their Initial Brief, as is the related matter, to wit, the legislative history of the statutory wording "ownership and use" and the statutory construction of all the statutes read in pari materia.

Therefore, the First District is abjectly wrong.

6. The reliance of Appellee on Gautier V. Lapof, 91 So. 2d 324 (Fla. 1956) in support of defeating Appellants' claim for tax

exemption is misplaced. Aside from the conspicuous fact that Gautier did not deal with the standard of "ownership and use", which is before the court herein, it should also be noted that the existence of an option to purchase is but one indicia of ownership which was examined in First Union and which should be considered by taxing authorities and courts in considering whether a party claiming an exemption has established sufficient indicia of equitable ownership to qualify for the exemption. Gautier dealt with a parcel of real property which was leased with an option to purchase to the party who claimed a homestead exemption in the property. This court held that the option to purchase, which was exercised in the middle of the calendar year, did not provide a basis to claim and support a homestead exemption for the property during that year.

While Appellee has asked this court to conclude that the existence of a mere option is fatal to the claim for equitable ownership, it has simultaneously failed to acknowledge and point out that the purchase price when the option is exercised in Leon County is a mere One Dollar ($1.00) in consideration. This fact boldly points out that the transaction involved in Leon County is in fact an acquisition financing mechanism in which the legal titleholder/lessor is a mere vessel for the holding of title for the real owner in interest, the Leon County Educational Facilities Authority. This fact is a further indicia of Leon County Educational Facilities Authority's ownership of the property in question for tax purposes.

CONCLUSION

This court has jurisdiction over the decision conflict certified from the First District Court of Appeals because the First District and the Fifth District both reached opposite conclusions of law on the same operative facts on the face of the opinions.

The First District Court of Appeals has misunderstood legislative history and has misconstrued the applicable statutory language when it opined that the term "ownership and use" requires legal title. There is no constitutional, statutory, legislative history or case law basis for this opinion by the First District. It is time for the Supreme Court, as a matter of law and public policy, to clarify the law as follows: the statutory concept of "ownership and use" requires an identification of the indicia of ownership and a determination of whether the indicia of ownership are in the lessor or lessee. There is no requirement for legal title, other than the processing of the application, for determination of "ownership" as part of the statutory basis of exemption from ad valorem taxation.

Respectfully submitted this 11th day of September 1996.

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CERTIFICATE OF SERVICE

THE UNDERSIGNED HEREBY CERTIFIES that a true and correct copy of the foregoing has been furnished by U.S. Mail to: RICKY L. POLSTON, Esq., P. O. Drawer 1836, Tallahassee, FL 32302; ROBERT NABORS, Esq., *SARAH* BLEAKLEY, Esq., and KIMBERLY FRANKLIN, Esq., Nabors, Giblin & Nickerson, P.A., 315 S. Calhoun St, Suite 800, Tallahassee, FL 32301; JAMES G. YEAGER, Esq., County Attorney, Lee County, 2115 Second Street, 6th Floor, Fort Myers, FL 33901; LARRY E. LEVY, Esquire, The Levy Law Firm, Post Office Box 10583, Tallahassee, FL 32302; C. ALLEN WATTS, Esq., Cobb, Cole & Bell, Post Office Box 2491, Daytona Beach, FL 32115-2491; SANFORD A. MINKOF, Esq., Lake County Attorney, Post Office Box 7800, Tavares, FL 32778; and ELLIOTT MESSER, Esq., Albert T. Gimbel, Esq., and KIMBERLY L. KING, Esq., Messer, Caparello, Madsen, Goldman & Metz, P.A., Post Office Box 1876, Tallahassee, FL 32302-1876 this 11th day of September 1996.

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