

IN THE SUPREME COURT OF FLORIDA

THE STATE OF FLORIDA, and the Taxpayers, Property Owners and Citizens of Sarasota County, including nonresidents owning property or subject to taxation therein, and all others having or claiming any right, title or interest in property to be affected by the issuance of the Bonds, herein described, or to be affected thereby,

FILED

SD J. WHITE

AUG 30 1996

CLERK, SUPREME COURT

By _____
Clerk of Supreme Court

Plaintiff/Appellee,

88872

v.

CASE NO. 96-2055-CA-01

SARASOTA COUNTY FLORIDA a political subdivision of the State of Florida,

Defendants/Appellants.

ON APPEAL FROM THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT IN AND FOR SARASOTA COUNTY, FLORIDA

Appellant

~~BRIEF OF APPELLEE~~

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PREFACE

Appellant, State of Florida, will be referred to as "Appellant". Appellee, Sarasota County, Florida, will be referred to as the "County". Citations to Appellant's Appendix will be stated as "App ____."

JURISDICTIONAL STATEMENT

This is an appeal pursuant to Rule 9.030(a)(1)(B)(i) of the Florida Rules of Appellate Procedure from a final Order issued pursuant to Chapter 75, Florida Statutes, validating bonds of indebtedness.

STATEMENT OF THE CASE

This is an appeal from the Final Judgment of the Circuit Court of the Twelfth Judicial Circuit in and for Sarasota County validating certain bonded indebtedness of Sarasota County, Florida ("the County") pursuant to **Chapter 75, Florida Statutes (1987)**.

The suit was initiated when the County filed a Complaint for bond validation pursuant to **Chapter 75, Florida Statutes**, seeking validation of the bonds not exceeding \$45,000,000. The State of Florida, by and through its State Attorney, Earl Moreland, objected to the bonds because the County failed to obtain referendum approval. The Complaint was heard before the Honorable Andrew D. Owens, Jr., Chief Circuit Judge of the Twelfth Judicial Circuit, in and for Sarasota County on July 16, 1996. The Court validated these bonds in a Final Judgment dated July 18, 1996. App "G". The State of Florida filed a timely Notice of Appeal on August 13, 1996.

STATEMENT OF THE FACTS

Sarasota County is a charter county organized under the authority of **Article VIII, Section 1G, Florida Constitution** in the County's duly adopted charter. Pursuant to the legislature's mandate in **Section 403.0891 Florida Statutes**, the County has attempted to develop a stormwater management program in the late '80's and has been refining said program since that time. Pursuant to the County's Stormwater Management Plan, on March 1, 1994, the County enacted Ordinance 94-066 as amended and supplemented by Ordinance #95-063 and #96-010, App "A". In addition, on July 11, 1995, the County adopted Resolution 95-154, articulating how stormwater improvement assessments will be calculated. App "B". On September 7, 1995, the County adopted Resolution 95-212 approving the plans and cost estimates for stormwater improvements. App "C". The County further adopted on February 13, 1996, Resolution #96-033 (the bond resolution). App "D". The Bond Resolution declared the County would issue the bonds and use the proceeds to fund the cost of acquiring and constructing stormwater improvements, to fund a debt service to account for the bonds and to pay all costs and expenses associated with the issuance of the bonds. The County then filed its complaint for validation under **Chapter 75, Florida Statutes**, App "E", asking the Court to validate said bonds. These stormwater improvement bonds differ substantially from prior issuances in that they apply to undeveloped as well as developed properties. The County's treatment of uncollected special

assessments is novel. If a taxpayer fails to pay the special assessment, his delinquencies will be added to the assessments of those taxpayers who do pay.

SUMMARY OF ARGUMENT

The Circuit Court erred by validating the bonds in this case because the bond issue violates Article VII, Section 12 of the Constitution of the State of Florida and the cases decided thereunder. The Florida Constitution prohibits any bond issuance payable from ad valorem tax revenues when the obligation is more than one year without holding a referendum. The instant bonds were issued without a referendum. While the County has tried to label this a "special assessment", it is in fact a tax payable from ad valorem revenues.

The County has devised a stormwater management scheme that goes well beyond the plan approved by this Court in Sarasota County v. Sarasota Church of Christ, 667 So.2d 180 (1995).

Unlike the Church of Christ plan, this bond issuance applies to pervious as well as impervious surfaces, developed as well as undeveloped properties. Thus since the benefit of the assessment applies to virtually all properties in the County, it is a tax and not a special assessment because said assessment does not confer any specific benefit to the land burdened by the assessment.

This bond issuance also imposes an impermissible burden upon the taxpayer regarding the County's treatment of uncollected special assessments. The collection scheme proposed by the County in this bond issuance is novel. The taxpayers who pay their taxes will also be burdened by paying the assessments of those taxpayers who do not pay. The collection scheme is set up

so that any uncollected assessments will be automatically added to the assessment bill of those taxpayers who pay. This assessment is not fairly and reasonably proportioned according to the benefits received and is thus not a special assessment, but rather a tax.

The failure to obtain referendum approval is a fatal defect and a condition precedent to validating the bonds in this case. The properties assessed do not receive a special benefit from the service provided as these assessments will apply to virtually all the lands in the County. The assessment is also not fairly and reasonable apportioned according to the benefits received because taxpayers who actually pay this assessment will have their tax bill increased to pay for the assessments of those taxpayers who do not pay the assessment. Therefore, this "special assessment" is really a tax in disguise payable from ad valorem taxation and does not comply with the Florida Constitution in that a referendum and voter approval was not obtained.

ARGUMENT I

I.

POINT ON APPEAL

**THE TRIAL COURT ERRED BY VALIDATING
BONDS WITHOUT REFERENDUM APPROVAL**

The Florida Constitution, Article VII, §12 prohibits governmental units within the State of Florida from issuing bonds, any portion of which will be paid from ad valorem tax revenues unless approved at referendum. The language of Article VII, §12 is as follows:

Local Bonds. - Counties, school districts, municipalities, special districts and local governmental bodies with taxing powers may issue bonds, certificates of indebtedness, or any form of tax anticipation certificates, payable from ad valorem taxation and maturing more than twelve months after issuance only:

(a) to finance or refinance capital projects authorized by law and only when approved by vote of the electors who are owners of freeholds therein not wholly exempt from taxation; or (emphasis supplied)

(b) to refund outstanding bonds and interest and redemption premium thereon at a lower net average interest cost rate.

The County has carefully tailored its Complaint, Resolutions and Exhibits in an attempt to claim the revenues used to pay for these bonds are "special assessments" rather than ad valorem taxes. This Court's recent decision in Sarasota County v. Sarasota Church of Christ, 667 So.2d 180 (1995), approves special assessment for stormwater runoff when applied to developed properties. This issuance differs substantially from that scenario mentioned above because this assessment will apply to

undeveloped as well as developed properties. This would thus obviate the reasoning of this Court in Church of Christ by allowing assessments to apply to undeveloped real property. Undeveloped real property will not receive the special benefit of this assessment. The Court in Church of Christ held that the special assessment was valid because the assessment applied to developed real property that contributed most of the stormwater runoff requiring treatment. This would not be the case here. The Court reasoned the special assessment was valid because it does not apply to undeveloped real property given that undeveloped real property actually contributes to the absorption of stormwater runoff. Sarasota County v. Sarasota Church of Christ, 667 So.2d at 185 (1995). This is not the case here.

This Court has explained the difference between special assessments and taxes. See City of Boca Raton v. State, 595 So.2d 25 (Fla. 1992). This Court stated:

"Taxes are levied throughout a particular taxing unit for the general benefit of residents and property and are imposed under the theory that contributions must be made by the community at large to support various functions of the government. Consequently, many citizens pay a tax to support a particular government function from which they receive no direct benefit. Conversely, special assessments must confer a specific benefit on the land burdened by the assessment and are imposed under the theory that the portion of the community that bears the cost of the assessment will receive a special benefit from the improvement or service for which assessment is levied." Id at 29.

A special assessment must meet two requirements. One, the property assessed must derive a special benefit from the service provided; and two, the assessment must be fairly and reasonable apportioned according to the benefits received. City of Boca

Raton 595 So.2d at 30. Neither of these prongs have been satisfied by the County here.

This Court specifically found in Church of Christ that the first prong of the Boca Raton test was met because the stormwater ordinance imposed special assessments on developed property, but not on undeveloped property or property without physical improvement. The County has extended this stormwater ordinance to apply to properties whether or not they have impervious surfaces and whether or not there are physical improvements on the land. Thus the first prong has not been met as there is no special benefit from the service provided, but rather the benefit is applicable to all property holders. Therefore, a special assessment would not be appropriate in this case.

ARGUMENT II.

THE COUNTY'S TREATMENT OF UNCOLLECTED SPECIAL ASSESSMENT IS UNREASONABLE AND DOES NOT FAIRLY AND REASONABLY APPORTION THE COST ACCORDING TO THE BENEFITS RECEIVED.

The County has adopted an apportionment methodology which contains a novel treatment of uncollected special assessments. The County's treatment of these delinquencies requires that taxpayers who pay the special assessment will have their assessment increased to cover the cost of all taxpayers who are delinquent in their assessment. The manner in which the County has chosen to allocate the cost of delinquencies in this assessment program is unreasonable, and it fails the second prong of the Boca Raton test that the assessments must be fairly and reasonably apportioned according to the benefits received. Since

taxpayers will be assessed not only the cost of the benefits they receive, but also the benefits delinquent taxpayers receive, this budgetary collection scheme is unreasonable and unfair.

No Florida Court has upheld such a treatment of uncollected assessments, and it is urged that this Court not approve this scheme now. Although admittedly it is unlikely, if 90% of the taxpayers who are assessed fail to pay, the remaining 10% of the taxpayers will be assessed 100% of the cost of this stormwater improvement under this scheme. It is patently unfair to approve an assessment scheme in which taxpayers may be forced to pay assessments for benefits other taxpayers receive. This is the definition of a tax not an assessment.

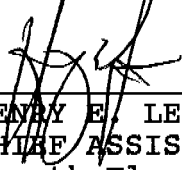
In sum, the proposed bond issue in the instant case collection scheme is unreasonable and not fairly apportioned according to the benefits received.

CONCLUSION

The County has adopted an elaborate stormwater runoff bond issuance disguised as a special assessment to avoid the referendum requirements of ad valorem taxation as required by the Florida Constitution. This bond issuance fails both prongs of the assessment test as enumerated by this Court. City of Boca Raton, 595 So.2d at 30. First, the properties assessed do not derive a special benefit from the service provided. This case differs from the assessments approved by this Court in Church of Christ in that the stormwater assessments are applied to undeveloped land as well as developed land. Thus the property assessed does not receive the special benefit that the Court approved in Church of Christ. Secondly, the assessments are not fairly and reasonably apportioned according to the benefits received because the collection scheme for delinquencies is unreasonable. Taxpayers will be assessed and forced to pay for the benefits to the property of delinquent taxpayers. Thus the assessment is not fairly and reasonably apportioned according to the benefits received, but rather they are also assessed for the benefits delinquent taxpayers receive.

This Court should reverse and set aside the Trial Court's validation of said bonds until such time as the County complies with the Florida Constitution and obtains referendum approval on the bond issue.

Respectfully submitted
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by hand/mail to Jorge L. Fernandez, County Attorney, 1600 Ringling Blvd., Second Floor, Sarasota, FL 34236 and George H. Nickerson, Jr., Esq., 315 S. Calhoun Street, Suite 800, Tallahassee, FL 32301, Attorneys for Defendants/Appellants, dated this 20 day of August, 1996.



HENRY E. LEE
Assistant State Attorney

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THE STATE OF FLORIDA, and the
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SARASOTA COUNTY FLORIDA a
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APPENDIX

TO

APPELLEE'S BRIEF

LIST OF EXHIBITS

- A. Ordinance Nos. 94-066, 95-063 and 96-010
- B. Resolution No. 95-154
- C. Resolution No. 95-212
- D. Resolution No. 96-033
- E. Complaint
- F. Answer
- G. Conformed Copy of Final Judgment