

IN THE SUPREME COURT FOR THE STATE OF FLORIDA

Case No.: SC20-1479

(Second DCA Case No. 2D18-3323)

BILL FURST, as Property Appraiser
of Sarasota County, Florida,

Petitioner,

v.

ROD REBHOLZ, as Trustee of Rod Rebholz
Revocable Trust,

Respondent.

**BRIEF OF AMICUS CURIAE, PEDRO J. GARCIA, AS PROPERTY
APPRAISER FOR MIAMI-DADE COUNTY, FLORIDA
SUPPORTING PETITIONERS**

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STATEMENT OF IDENTITY AND INTEREST OF AMICUS CURIAE

Pedro J. Garcia is the duly elected Property Appraiser in and for Miami-Dade County, Florida (“Miami-Dade County Property Appraiser”). As such, he is charged with the application of Florida’s ad valorem tax exemption laws within Miami-Dade County. Like Bill Furst, the Property Appraiser of Sarasota County, the Miami-Dade County Property Appraiser has been confronted with the issue raised in this appeal; namely, whether a property appraiser may apportion a property between its commercial and residential use for purposes of the homestead tax exemption.

Given the large population of Miami-Dade County, and over 400,000 property owners receiving a homestead exemption within the County, the Miami-Dade County Property Appraiser investigates and issues a proportionately large number of homestead-exemption liens compared to other counties in the state. Accordingly, the Miami-Dade County Property Appraiser has an interest in assuring this Court is fully briefed on the errors practical implications of the Second District’s decision on the administration of the homestead tax exemption.

Florida property appraisers and the Florida Department of Revenue have long operated with the understanding that apportionment was fair and appropriate under Florida law. Thus, the Miami-Dade County Property

Appraiser's position herein is supportive of that of the petitioners, Bill Furst, as Property Appraiser for Sarasota County, and Jim Zingale, Executive Director of the Florida Department of Revenue, in asking this Court to quash the decision of the Second District Court of Appeal in *Furst v. Rebholz*, 302 So. 3d 423 (Fla. 2d DCA 2020).

The purpose of this brief is not to replicate the analysis provided by the able counsel of Bill Furst and Jim Zingale, but to provide the Court with context and address the difficulties created by the Second District's decision in the implementation of the homestead exemption statutes in cases where only a portion of the homestead is being used or occupied by the property owner.

SUMMARY OF THE ARGUMENT

The Florida Constitution is clear. Taxpayer owned property is only entitled to homestead tax exemption to the extent it is used as a permanent residence. Commercial use is inconsistent with use as a permanent residence. Accordingly, the Second District's decision, which extends the homestead tax exemption to portions of a property used for commercial purposes, violates the Florida Constitution.

Pre-Rebholz, the Florida Statutes and Florida Administrative Code worked harmoniously with the requirements of the Florida Constitution, allowing property appraisers to apportion the homestead tax exemption to only those portions of a property used as a permanent residence. The jurisprudence was so consistent that the Second District only reached its result by overlooking statutes, unjustifiably alienating exemptions for disabled persons, and applying the incorrect legal standard.

Post-Rebholz, the homestead exemption cannot be apportioned and must be applied in an all-or-nothing approach. The practical implications of the Second District's decision extend beyond the specific facts of this case and have led to absurd applications of the homestead tax exemption.

ARGUMENT

I. FLORIDA LAW PRIOR TO *REBHZOLZ* WAS COGENT AND INTERNALLY CONSISTENT, ALLOWING PROPERTY APPRAISERS TO APPORTION A HOMESTEAD EXEMPTION IN ACCORDANCE WITH A PROPERTY'S OWNERSHIP AND USE

Under Florida law, the dual touchstones that determine a homestead property's entitlement to a tax exemption are its ownership and use. See, e.g., art. VII, § 6(a), Fla. Const. For most Florida homeowners, the analysis of these touchstones is simple because most homeowners both own and occupy/use the entirety of their homes, entitling them, in a simple and straightforward fashion, to the constitutional homestead exemption from taxation. In a smaller number of cases, however, some homeowners change portions of their homestead to commercial uses.

Prior to the *Rebholz* decision, partial use cases were handled by Florida's property appraisers in a similarly simple and straightforward fashion. The legislative scheme was cogent and logically consistent with the ownership/use requirement of the Florida Constitution, allowing property appraisers to apportion the homestead exemption to only those portions of the property still used by the owner as their homestead, while excluding those portions given over to the commercial use (i.e., *not* used by the owner as a permanent residence).

A) Florida Constitution Requires Use as a Permanent Residence.

The homestead exemption from taxation is authorized in Article VII, Section 6(a) of the Florida Constitution, which states:

Every person who has the legal or equitable title to real estate and maintains thereon the permanent residence of the owner, or another legally or naturally dependent upon the owner, shall be exempt from taxation thereon... upon establishment of right thereto in the manner prescribed by law.

Art. VII, § 6(a), Fla. Const.

This constitutional provision clearly contemplates both ownership and use of the property as a permanent residence to qualify for a homestead exemption. When an owner relinquishes portions of the property to be used for commercial purposes, that portion of the property ceases to be “maintain[ed]” as a “permanent residence.” Thus, permitting the commercial portions of the property to benefit from a homestead tax exemption violates Article VII. Where the alternative in an all-or-nothing approach would be to remove the exemption from the entire property, the most logical solution is to allow the exemption to be granted to those portions used as the owner’s permanent residence, while assessing the commercial portions as non-homestead.

B) Florida Statutes Provide for A Partial Homestead Exemption to Those Portions Used as a Permanent Residence.

The dual touchstones of ownership and use are fortified in Florida statutes, which contain similar provisions. Section 196.011(1)(a) of the Florida Statutes, which governs exemption applications states:

[E]very 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 state taxation as a result of its ownership and use shall, on or before March 1 of each year, file an application for exemption. . .

§ 196.011(1)(a), Fla. Stat.

Similarly, section 196.012(13) of the Florida Statutes, which applies to the entirety of chapter 196, includes the following definition:

“Real estate used and owned as a homestead” means real property to the extent provided in s. 6(a), Art. VII of the State Constitution, but less any portion thereof used for commercial purposes, with the title of such property being recorded in the official records of the county in which the property is located. Property rented for more than 6 months is presumed to be used for commercial purposes.

§ 196.012(13), Fla. Stat.

While the definition of “real estate used and owned as a homestead” confirms the dual requirement of use and ownership, it also goes much further; it confirms that portions of “real estate used and owned as a homestead” being used for commercial purposes may be lessed out.

Further proof that the legislature never intended an “all-or-nothing” approach can be found within section 196.031, entitled “Exemption of Homesteads,” which provides in pertinent part:

A person who on January 1, has the legal title or beneficial title in equity to real property in this state and who in good faith makes the property his or her permanent residence . . . is entitled to an exemption . . . and the exemption may be apportioned among such of the owners as reside thereon, as their respective interests appear.

§ 196.031(1)(a), Fla. Stat.

This statute confirms a single-family residence can in fact be apportioned between respective interests, albeit regarding the extent of ownership. Nevertheless, it provides a clear indication that the Legislature intended to provide for the apportionment of the homestead exemption within a single residence as between its exempt and non-exempt uses. Given this indication, suggesting that a single homestead exemption can be apportioned between co-owners, but that the same single homestead becomes indivisible when an owner puts a portion of the homestead to commercial use, flies in the face of logic, common sense, and the Florida Constitution.

Moreover, section 196.031(4), Florida Statutes, provides:

The exemption provided in this section only applies to those parcels classified and assessed as owner-occupied

residential property or only to the portion of property so classified and assessed.

§ 196.031(4), Fla. Stat. “The exemption provided in this section” is the precise homestead exemption at issue in this case. See § 196.031(1)(a), Fla. Stat. Thus, if there was any doubt as to the Legislature’s intent when it said that “real estate used and owned as a homestead” necessitated carving out commercial portions of the property, then section 196.031 leaves no doubt.

C) Florida Administrative Rules Provide for A Partial Homestead Exemption to Those Portions Used as A Permanent Residence.

The Department of Revenue (“DOR”) prescribes rules and regulations for the assessment of property and is authorized by both sections 195.027(1) and Section 213.06(1) of the Florida Statutes to promulgate rules implementing section 196.031. Section 195.027(1) further confirms that property appraisers must all follow the rules implemented by the DOR.

In keeping with its duties, the DOR implemented Florida Administrative Code Rule 12D-7.013 to provide guidance to property appraisers in determining how to apportion a homestead when a property owner uses a portion of their homesteaded property for commercial

purposes. This rule provides that when a property owner uses a portion of their home for commercial purposes, they do not lose their homestead exemption; but that such commercial and homestead uses should be separated, with the non-homestead portion being excluded from the benefit of the homestead exemption. See Rule 12D-7.013(5) (“Property used as a residence and also used by the owner as a place of business does not lose its homestead character. The two uses should be separated with that portion used as a residence being granted the exemption and the remainder being taxed”).

The common theme in Article VII, section 6 and throughout chapter 196 is the requirement of both ownership and use as a permanent residence; there can be no doubt that commercial use is inconsistent with use as a permanent residence. *Pre-Rebholz*, Florida constitutional law, statutory law, and administrative law were all consistent regarding this concept. *Pre-Rebholz*, homestead exemptions, which require use as a permanent residence, were applied to whatever portions of real property that were used as a permanent residence. Homestead exemption benefits, which cannot be applied to commercial property, were not applied to the portions of property used for commercial purposes. This apportionment was consistent with the law and flowed logically from the property owner’s

failure to maintain their permanent residence on the portion used for commercial purposes.

II. THE SECOND DISTRICT MISAPPLIED PRE-EXISTING LAW, INCLUDING CONTROLLING SUPREME COURT PRECEDENT

Rebholz is the only anomaly in this otherwise harmonious string of jurisprudence. In a divided opinion, the Second District ignored and misapplied several provisions of Florida law that supported the apportionment of homestead exemptions. The dissent said it best: “One cannot simultaneously reside in a residence and rent that residence for another’s exclusive use as a residence. The Florida Statutes are consistent with that reality.” *Rebholz*, 302 So. 3d at 435 (Atkinson, J., dissenting). As further argued by Petitioners, the Second District made several unjustified missteps to reach its flawed conclusion.

First, the Second District used the wrong legal standard in interpreting the property tax homestead exemption. Property tax exemptions must be strictly construed against the taxpayer and against an exemption. Instead, the Second District applied case law addressing Article X of the Florida Constitution, which provides protection of a homestead against forced sale. *See Rebholz*, 302 So. 3d at 433-34. The

Second District justified this fundamental error on the grounds that “both provisions are intended to protect an individual’s home.” *Id.*

Although the homestead tax exemption does protect an individual’s home through financial tax incentives, Article VII only allows such protection to the extent that said home is owned and *used as a permanent residence*. By viewing this case through the Article X lens, the Second District necessarily considered the facts and law *in favor* of the exemption, in violation of this Court’s directive that tax exemptions must be construed against the taxpayer and against the exemption. *Compare Steuart v. State ex rel. Dolcimascolo*, 161 So. 378, 379 (Fla. 1935) (superseded on other grounds by constitutional amendment) (“[e]xemptions from taxation, whether stated in the Constitution or statutes, are to be construed against the claimant and in favor of the taxing power”), *with Snyder v. Davis*, 699 So. 2d 999, 1002 (Fla. 1997) (“the homestead provision [of Article X] is to be liberally construed in favor of maintaining the homestead property.”).

Second, the Second District’s opinion failed to even consider the provisions of section 196.031(4) of the Florida Statutes. As discussed above, this section is clear confirmation that the legislature intended for homesteaded property to be apportioned such that the exemption only applies to that portion of property that is owner-occupied. The dissent

considered section 196.031(4) and reached a result contrary to the majority. *Rebholz*, 302 So. 3d at 435. The majority’s failure in this regard is clear indication of the errors contained throughout the opinion.

Third, to avoid finding section 196.012(13) of the Florida Statutes unconstitutional—as the trial court had—the Second District also erroneously interpreted the definition of “real estate used and owned as a homestead” in that section to apply only to exemptions in favor of disabled veterans and the permanently disabled. *Rebholz*, 302 So. 3d 423, 429–30. Not only did the Second District ignore that section 196.012 applies to all of Chapter 196, but it would also defy logic for only disabled persons and veterans to be subject to apportionment, while allowing the rest of Florida’s taxpayers be able to take advantage of apportionment. Moreover, the Second District’s holding conflicts with *Karayiannakis v. Nikolits*, 23 So. 3d 844, 846 (Fla. 4th DCA 2009). In *Nikolits*, the Fourth District, in keeping with the plain language of the statute, confirmed that section 196.012(13) did indeed address the commercial use of *all* homestead property.

Fourth, and in support of its flawed interpretation of section 196.012(13), the Second District also erroneously invalidated Rule 12D-7.013(5) as an “invalid exercise of delegated legislative authority.” *Rebholz*, 302 So. 3d 423, 431. By doing so, the Second District expanded the reach

of its erroneous holding by eliminating the rule by which Florida property appraisers apportion any parcel of real property, regardless of whether it consists of only a single-family residence or instead consists of multiple structures and multiple uses.

To limit the apparent damage in its holding, the Second District, in its opinion, notes that the “issue of whether establishment of a commercial enterprise upon property contiguous to the permanent residence would be the subject to assessment for ad valorem taxation is not before this court, and nothing in this opinion should be read as addressing that issue.” *Rebholz*, 302 So. 3d 423, 434 n.6. To the contrary, there should be no doubt that the Second District’s decision does indeed cast a pall over the ability of Florida property appraisers to apportion exemptions and properties, because the decision eliminated the very rule that allowed for such apportionment of such a commercial enterprise, and, as explained above, limited the application of the statutory definition which allowed such apportionment of parcels with multiple uses to the exemptions for disabled veterans and the permanently disabled. It is this pall, and the potential consequences—both intended and unintended—of the Second District’s opinion, that causes the most concern for the Miami-Dade County Property Appraiser.

III. THE PRACTICAL EFFECT OF THE *REBHZOLZ* DECISION EXTENDS BEYOND THE FACTS OF THIS CASE

This Court should consider the potential consequences of the Second District's decision because the practical implications extend far beyond the specific facts of this case. In this case, the commercial portions of the subject property were used as living units for tenants. This is not the only type of commercial use that can impact a homestead exemption. The Second District's decision would also apply to portions of a parcel that could *only* be used for commercial purposes. And the fallacy in the Second District's decision is easily seen when viewed in the context of other factual scenarios.

From time immemorial, savvy entrepreneurs have been looking for ways to maximize profits and limit taxes. The Second District's decision creates a loophole for improper application of the homestead tax exemption that is inconsistent with the Florida Constitution and unfair to those homeowners who use their entire property as their residence. For example, imagine an individual purchases a large 16,000 square-foot commercial building, "converts" it into a single-family home, and is granted homestead tax exemption on the property. The individual then lives in a small apartment within the building and rents most of the building for events

for up to 500 people, including weddings, television and film production, and other commercial events. The building is rented most every weekend. Under the Second District's opinion, the Property Appraiser would be forced to continue allowing homestead exemption on the entire event space not being used as the taxpayer's residence. This commercial operation then fails to pay its fair share of taxes and shifts its tax burden to other taxpayers who are not improperly benefitting from the exemption.

While the extreme factual scenario described above highlights the absurdity of the Second District's decision, there are many more common scenarios involving mixed-use properties on a smaller scale. For example, renting one or more of a parcel's separate structures to be used solely to operate a business, such as the auto mechanics-garage scenario highlighted by Petitioner Bill Furst. Int. Br. At 19 n 4. Another common mixed-use scenario is to create a separate commercial unit by partitioning the front of a residence to be used exclusively as a storefront while continuing to reside in the rear living quarters. A third common mixed-use scenario is a single-family property with a ground floor commercial operation and an apartment on the second floor.

In reaching its decision, the Second District purportedly believed it was protecting "countless Florida citizens who reside within their

permanent residences while renting bedrooms or working from home to make ends meet.” *Furst v. Rebholz*, 302 So. 3d 423, 434 (Fla. 2d DCA 2020). But this is a red herring; properly apportioning the homestead exemption was never a threat to those homeowners who merely work out of their bedroom or share the home with a roommate. See Rule 12D-7.013(5) (“Property used as a residence and also used by the owner as a place of business does not lose its homestead character. The two uses should be separated with that portion used as a residence being granted the exemption and the remainder being taxed”).

In fact, the specifics of this case, as well as the scenarios outlined above, involved identifiable portions of the parcel used *exclusively* for commercial purposes, *not* portions that could arguably be used as the owner’s permanent residence. And even where a parcel has an identifiable, exclusively commercial portion, the homeowner would still be permitted to keep the *full* \$50,000 exemption and 3% cap on their permanent residence, and the commercial portion would benefit from a 10% cap as any other commercial property.

The alternative, affirming the Second District’s decision, will force a draconian all-or-nothing approach. See *Rebholz*, 302 So. 3d at 432. Allowing a homestead exemption on a largely commercial property is not

only inconsistent with the constitutional requirement that a homestead be used as a permanent residence, but it is also unfair to the majority of Florida homeowners who do use their home as intended by the Florida Constitution.

CONCLUSION

Based upon the foregoing, the Miami-Dade County Property Appraiser requests that this Court apply the plain language of Article VII, Section 6 of the Florida Constitution, as well as the implementing statutes and rules, which allow apportionment of a single-family residence between its homestead use and commercial use. Accordingly, this Court should reverse the opinion on appeal, and remand this cause for entry of a judgment validating the Property Appraiser's apportionment of the subject property between its commercial use and homestead use.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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I HEREBY CERTIFY that the foregoing brief has been prepared in Ariel 14-point font in compliance with Rule 9.045 of the Florida Rules of Appellate Procedure, and contains fewer than 5000 words in compliance with Rule 9.370(b) of the Florida Rules of Appellate Procedure.

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