IN THE SUPREME COURT OF FLORIDA

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

Petitioner,

v.

Case No. SC20-1479
Dist. Ct. Case No. 2D18-3323

ROD REBHOLZ, as Trustee of the Rod Rebholz Revocable Trust,

Respondent.
_____/

ON DISCRETIONARY REVIEW FROM THE SECOND DISTRICT COURT OF APPEAL

ANSWER BRIEF OF RESPONDENT DON REBHOLZ

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TABLE OF CONTENTS

PAGE

TABLE OF AUTHORITIES

CASES

CONSTITUTION AND STATUTES

ADMINISTRATIVE RULES

COURT RULES

OTHER AUTHORITIES

STATEMENT OF THE CASE AND FACTS

The Respondent agrees with some of the Property Appraiser's Statement of the Case and Facts, but writes separately to correct several erroneous statements.

Description of the Property

The Property in question is a single family residence, with one entrance, and one mailbox. [R.308-09]. The residence includes a living room, kitchen, and master bedroom downstairs, and four "en suite" master bedrooms and a laundry room upstairs. [R.320]. The fact that the upstairs master bedrooms included bathrooms and lockable doors did not make them anything other than typical master bedrooms. The rooms did not have ranges, dishwashers or other large appliances, although some of the rooms contained small kitchen appliances such as mini-fridges and microwave ovens. [R.213,301-02]. The trial court found that the property was a single-family residence, and that Mr. Rebholz had merely rented a "room" within his residence. [R. 187]. On appeal, the Second District agreed, finding that Mr. Rebholz "rented bedrooms in his home." *See Furst v. Rebholz*, 302 So. 3d 423, 425 (Fla. 2d DCA 2020).

Use of The Property

The Property Appraiser claims that Mr. Rebholz used only a portion of the property as his permanent residence, and that he had given up exclusive possession of one upstairs bedroom, and was actively using it for commercial purposes. These statements are not supported by the record, which showed that while he was alive, Rod Rebholz resided in the Property, but often rented one or more of the upstairs bedrooms to various housemates[1] [R.321], while using the other bedrooms for visiting relatives. [R. 215-16]. In lieu of traditional leases, the housemates signed simple, one-page "Residential Family Agreements." [R. 224,316]. In the agreements, the housemates specifically acknowledged that they would be "living in the private residence of Rod Rebholz." [R. 224,316]. For their rooms, they paid Rod Rebholz $475-510 per month, which included a portion of the shared utility expenses. [R.224,309,316]. Mr.

[1] The Property Appraiser characterized one of these housemates, Michael Beaumont, as expecting something other than a "roommate" situation due to his testimony that he had wanted "his own place" at the time he moved in. However, Mr. Beaumont also explained that he was previously sleeping on the couch in a friend's one-bedroom apartment. [R.306]. Thus, by "his own place," Mr. Beaumont appeared to be referring to his own bedroom, and not necessarily his own apartment.

Rebholz had keys to their rooms. [R. 213,302-03].

Based on the evidence, the trial court found that at all relevant times, Mr. Rebholz maintained the Property as his permanent residence. [R. 187]. On appeal, the Property Appraiser argued that by renting bedrooms with lockable doors, Mr. Rebholz had surrendered his right to that part of his residence, and had turned it into a place of business. *See id.* at 427-28. The Second District disagreed with the Property Appraiser's contentions, and upheld the trial court's finding that Mr. Rebholz had met his burden of proving that he had used the property as his permanent residence. *See id.* at 429. Specifically, the Second District found that the rental of bedrooms and common spaces within a single-family permanent residence did not create "a place of business," especially when the homeowner and tenants share much of the house as a common area. *See id.* at 431.

Classification of Property

The Property Appraiser erroneously states, without citing to the Record, that upon determining that Mr. Rebholz was not entitled to a homestead exemption on the room that he rented, the Property Appraiser re-classifIed that portion of the property as "non-

homestead." However, the evidence was clear that, during the years in question, and up to and including January 1, 2014, the Property Appraiser classified the Property as owner-occupied residential property.[2] [R.88, 99, 230]. There was no evidence that the Property Appraiser changed the classification of the Property when he retroactively removed the homestead exemption from a portion of the property. At trial, Katherine Reardon of the Property Appraiser's office testified that, while she changed the percentage of the property that qualified for the homestead exemption, she had no knowledge about any retroactive change to the classification of the Property. [Tr. 32-33]:

> THE COURT: And has your office, the Property Appraiser's Office, reclassified this property in light of your claims to try to set aside some portion of the

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[2] Specifically, the Property Appraiser admitted the allegation of the Complaint that stated:

> From October 27, 1993 through and including January 1, 2014, the Property was classified and assessed by the Property Appraiser as owner-occupied residential property.

[R.88,99]. In addition, the Property Appraiser admitted this same allegation in response to Mr. Rebholz's Request for Admissions. [R.230). Rule 1.370(a) provides that when good faith requires that a party qualify an answer, the party shall specify so much of it as is true and qualify or deny the remainder. The Property Appraiser did not qualify his admission, and thus it was properly deemed admitted.

> Homestead exemption?
>
> MS. REARDON: We have changed the Homestead exemption allocation on the property to reflect a percentage – well, now, it's a hundred percent not Homestead. Mr. Rebholz passed away.
>
> THE COURT: But in terms of a classification, does it change from owner-occupied residential?
>
> MS. REARDON: That is not something that I do, sir. That's not a part of my scope of work is changing --

The trial court thus found that the Property was always classified and assessed by the Property Appraiser as owner-occupied residential property [R. 190], and the Second District agreed. *See Rebholz*, 302 So. 3d at 426.

Removal of Homestead Exemption

The Property Appraiser claims in his Initial Brief that Rod Rebholz did not lose his homestead exemption. However, in her letter dated September 24, 2014, Katherine Reardon of the Property Appraiser's Office notified Rod Rebholz that:

> It has come to our attention that you may have been benefitting improperly from a Homestead Exemption for the tax years 2004 through 2013.

[R. 93, 233]. Also, the parties' Joint Pretrial Stipulation clearly states that the Property Appraiser later *cancelled the homestead*

exemption on the Plaintiff's Property and recorded a tax lien against the Property to recover taxes, penalties and interest for the years 2004-2011 and 2013. [R.321]. Regardless of the semantics, the Property Appraiser's determination ultimately resulted in the retroactive removal of the benefits of the homestead exemption, i.e. the Save Our Homes cap, on a portion of the Property.

The Property Appraiser also erroneously claims that the only change was a 7% increase in the Property's taxable value, and that the tax lien only included back taxes. However, in this case, the Property Appraiser did not just deny Mr. Rebholz the full benefits of the Save Our Homes cap for the current year. In this case, the Property Appraiser retroactively removed the homestead exemption and Save Our Homes cap from a portion of the Property and recorded a tax lien against the Property for 10 years of back taxes, *plus* a 50% penalty and 15% interest. [R.321].

Reason for Removal of Homestead Exemption

Finally, to make his position appear less extreme, the Property Appraiser has attempted to mis-characterize the property as a commercial boarding house. However, the Property Appraiser initially removed the benefits of the homestead exemption from 15%

of the Property based solely on the fact that Rod Rebholz was renting a bedroom in his residence to a third party. [R.233]. The Property Appraiser did so based on his long-held stance that the rental of a bedroom, or the use of any portion of a residence for "commercial" purposes, requires the removal of the benefits of the homestead exemption from that portion of the property. [R.25-27].

The three trial court judges that were involved in this case all disagreed with the Property Appraiser's position. In denying the Property Appraiser's Motion to Dismiss, Judge Kimberly Bonner commented that "the legality of imposing retroactive tax liens on an otherwise eligible homeowner merely because he takes a roommate to assist with expenses, or works freelance from home, is dubious, at best." [R.63]. In denying the Property Appraiser's Motion for Summary Judgment, Judge Andrea McHugh likewise found that there was no legal basis for denying a homeowner a homestead exemption for a room rented within his residence. [R.85].

At trial, the Property Appraiser attempted to make his case more palatable by introducing evidence that Rod Rebholz occasionally rented more than one bedroom in his house. However, Judge Mercurio did not find that Mr. Rebholz was running a

commercial boarding house. Rather, Judge Mercurio found that the Property Appraiser revoked 15% of Mr. Rebholz's homestead exemption upon discovering that Mr. Rebholz had rented a room within his single-family residence to a tenant [R. 187], and the Second District agreed with that finding. *See id.* at 426.

Trial Court's Final Judgment

The Property Appraiser mischaracterized the trial court's ruling, claiming that the trial court found that Mr. Rebholz was entitled to the homestead exemption "on the entire property regardless of the manner in which he was utilizing other portions of it, including the portion to which he had given up exclusive possession." The trial court made no such findings. The court did not find that Mr. Rebholz had given up exclusive possession over any portion of the Property, and the court certainly did not find that Mr. Rebholz was entitled to a homestead exemption regardless of how he used the property. Rather, the trial court's ruling was based on the court's finding that the rental of a room within an owner-occupied single-family residence did not deprive Mr. Rebholz of the right to a homestead exemption on the entire residence.

Opinion of Second DCA

The appellate court's holding was similarly limited. On appeal, the Second District agreed with the trial court that there is no legal basis for removing the homestead exemption from a bedroom or other portion of a permanent residence that is rented to residential tenants. *See id.* at 434. However, the court specifically noted that its Opinion should not be construed to address the issue of whether a commercial enterprise that was contiguous to the permanent residence would qualify for the homestead exemption. *See id.* at 434 n.6.

SUMMARY OF ARGUMENT

Because Mr. Rebholz owned the Property and maintained it as his permanent residence, and the property was classified and assessed as owner-occupied residential property, the Florida Constitution and Statutes allowed him to receive the homestead exemption and the Save Our Homes cap on his entire residence and contiguous real property. The Second District Court of Appeal correctly held that there is no basis in the Constitution or Statutes for carving up a single-family residence and removing the homestead exemption from rooms rented to residential tenants.

It is important to note at the outset that, if interpreted and applied correctly, the statutes referenced herein are generally consistent with the Constitution. The constitutionality of section 196.012(13) was raised as an alternative argument in the original Complaint because of the property appraisers' historic mis-application of that section to the homestead exemption, when it clearly was only intended to apply to the more generous 100% tax exemption provided by sections 196.081, 196.091 and 196.101, Florida Statutes. If the Court were to clarify that the stricter requirements of section 196.012(13) do not apply to the homestead

exemption, then no constitutional analysis of that statute would be necessary.

Otherwise, the statutory framework evinces a clear intention to allow a homestead exemption on the homeowner's entire residence. First, while section 196.012(13), which defines the requirements for the 100% tax exemption, expressly excludes portions of the homestead property used for commercial purposes, the definition of "homestead" of section 192.001(8) does not exclude portions of homestead property used for commercial purposes. Even more significantly, in section 196.061, when addressing the effect of rental of a dwelling on a taxpayer's right to the homestead exemption, the legislature specifically limited the statute to situations where "all or substantially all" of a dwelling was rented, and did not impose any penalties for the rental of individual rooms within a dwelling.

The legislature provided in section 196.031(4) for the denial of a homestead to portions of property that are not classified as owner-occupied residential property, thus allowing the property appraisers to deny a homestead exemption to portions of property that are classified as multi-family or commercial property.

However, that section does not apply to cases like the instant case, which involved a single-family residence that was always classified and assessed as owner-occupied residential property.

The removal of a homestead exemption and the recording of a tax lien for back taxes, penalties and interest based solely on a homeowner's rental of individual rooms within their residence is contrary to the intent of Florida voters in approving the Constitution, and is in no way required by the enabling legislation. Such an aggressive position has the potential to impose a needless financial burden on many unsuspecting taxpayers. This Court should thus take this opportunity to clarify that section 196.012(13) does not apply to the homestead exemption, and to affirm the Second District's holding that there is no legal basis for removing the homestead exemption or Save Our Homes cap from rooms rented to residential tenants within a homeowner's single-family residence.

ARGUMENT

I. THE FLORIDA CONSTITUTION DOES NOT AUTHORIZE THE PROPERTY APPRAISER TO DENY A HOMESTEAD EXEMPTION OR THE SAVE OUR HOMES CAP TO RENTED ROOMS WITHIN A SINGLE-FAMILY HOME USED AS THE OWNER'S PERMANENT RESIDENCE.

The Property Appraiser's removal of a portion of Rod Rebholz's homestead exemption and recording of a tax lien for back taxes, penalties and interest was contrary to the Florida Constitution. To qualify for a Florida homestead exemption under the Constitution, a taxpayer must have legal or equitable title to the property and maintain it as their permanent residence. *See* Art. VII, §6(a), Fla. Const. "Permanent residence" is defined as "that place where a person has his or her true, fixed, and permanent home and principal establishment to which, whenever absent, he or she has the intention of returning." *See* §196.012(17), Fla. Stat. Once the taxpayer qualifies for a homestead exemption, article VII, §4(d) ["the Save Our Homes cap"] limits the amount by which the assessment of the homestead may increase each year.

Constitutional provisions involving other tax exemptions provide that only the *portions* of the property used for the exempt

purpose may be exempted. For example, article VII, §3(a) authorizes the legislature to exempt from taxation "*such portions of property* as are used predominantly for educational, literary, scientific, religious or charitable purposes." Thus, for these other tax exemptions, it is up to the legislature to determine the qualification requirements, and the exemptions may be limited to a portion of the taxpayer's property.

However, regarding the homestead exemption, article VII, §6(a) simply provides that:

> 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 on the owner, shall be exempt from taxation thereon . . .

For the homestead exemption, the voters thus used the term "thereon," as opposed to the more restrictive phrase "on the portion being used for . . ." Likewise, the Save Our Homes cap of article VII, section 4(d) applies to the "homestead," not just a portion of the homestead.

A. Constitutional exemptions should not be strictly construed against taxpayers.

Article VII, section 6(a) is not ambiguous. However, if it were, the Property Appraiser's contention that it should be construed against the taxpayer is not correct. The cases cited by the Property Appraiser and amicus curiae, such as *State v. Globe Communications Corp.*, 648 So. 2d 110 (Fla. 1994), merely stand for the proposition that, whenever possible, statutes must be construed so as not to conflict with the constitution. However, in the instant case, Mr. Rebholz has consistently contended that, if properly interpreted and applied, all of the relevant statutes are valid and constitutional.

One older Supreme Court case, *Steuart v. State*, 161 So. 378 (Fla. 1935), erroneously states that constitutional exemptions should be construed against the taxpayer. However, the cited basis for the Court's statement is *Rast v. Hulvey*, 80 So. 750 (Fla. 1919), which involved a *statutory* tax exemption, not a constitutional exemption. Statutory tax exemptions are construed against the taxpayer because of section 196.001, which provides that property is subject to taxation unless expressly exempted from taxation.

However, nothing in the Florida Constitution suggests that article VII should be construed against taxpayers.[3]

B. The Property was Mr. Rebholz's permanent residence.

The trial court correctly found, and the Second District agreed, that Mr. Rebholz maintained the property as his permanent residence, and those findings were amply supported by substantial, competent evidence in the record. The record showed that the property was a single-family residence with a living room, kitchen and master bedroom downstairs, and four "en suite" master bedrooms and a laundry room upstairs. [R.320]. While he was alive, Mr. Rebholz resided in the Property, but rented one or more of the upstairs bedrooms to various housemates, while using the other bedrooms for visiting relatives. [R.215-16, 321]. Instead of traditional leases, the housemates signed simple, one-page

[3] Unlike prior versions, the 1968 Florida Constitution expressly limits the power of the legislature to tax. *See* Art. 7, §1(a), Fla. Const. (which provides that "no tax shall be levied except in pursuance of law"). For this reason, taxes are strictly construed against the taxing authorities. However, with respect to exemptions, while exemption *statutes* are strictly construed against taxpayers due to the language of section 196.001, there is no constitutional basis for construing article VII against the taxpayers it was designed to protect. To the extent that *Steuart* suggests otherwise, it should be overruled.

"Residential Family Agreements," in which they specifically acknowledged that they would be "living in the private residence of Rod Rebholz." [R.224,316].

A "permanent residence," pursuant to section 196.012(17) is the place where a person has their permanent home. It is undisputed that Mr. Rebholz had his permanent home on the Property. Given these facts, the trial and appellate courts were correct in finding that the property was Mr. Rebholz's permanent residence, and that he merely rented bedrooms within his home. [R.187]; *see id.* at 425, 429. Therefore, pursuant to article VII, sections 6(a) and (4)(d), Mr. Rebholz was entitled to receive the homestead exemption and the Save Our Homes cap on his entire residence.

II. THE FLORIDA STATUTES ALSO DO NOT AUTHORIZE THE PROPERTY APPRAISER TO DENY A HOMESTEAD EXEMPTION OR THE SAVE OUR HOMES CAP TO RENTED ROOMS WITHIN A SINGLE-FAMILY HOME USED AS THE OWNER'S PERMANENT RESIDENCE.

Consistent with the Constitution, the Florida Statutes also do not authorize the Property Appraiser to remove a homestead exemption or the Save Our Homes cap from a room rented within a

residence. The implementing statute, section 196.031(1)(a), mirrors the constitutional provision in providing a homestead exemption to property maintained as the taxpayer's permanent residence, and clarifies that the homestead exemption applies to the "residence and contiguous real property." The statute implementing the Save Our Home cap simply applies to "property that receives a homestead exemption." §193.155(6), Fla. Stat.

The language of the homestead exemption and Save Our Homes cap statutes is notably different from the language used for other tax exemptions. For example, section 196.192, Florida Statutes, which addresses exemptions for educational, literary, scientific, religious, charitable and governmental property, explicitly states that those exemptions only apply to the percentage of the property used for the exempt purpose.[4] In contrast, the statutes regarding the homestead exemption and Save Our Homes cap contain no such language. The legislature did promulgate statutes

[4] The Property Appraiser frequently references section 196.192 as support for his position. However, section 196.192 only applies to exemptions for property used for "exempt purposes," which is defined by section 196.012(1) as property used for educational, literary, scientific, religious, charitable or governmental purposes. Section 196.192 does not apply to the homestead exemption.

clarifying how mixed-use and rental properties should be treated, but, as discussed *infra,* none of those statutes are applicable to the instant case, which involves a single family residence in which the taxpayer resided at all material times.

A. "Homestead" is defined by section 192.001(8), which does not exclude portions of property used for commercial purposes.

The Property Appraiser improperly relies on a definitional statute that is not applicable to the article VII, §6(a) homestead exemption. The Florida Statutes contain two definitional sections that warrant discussion. The statute applicable to homestead exemptions, section 192.001(8), defines "homestead" as follows:

> (8) "Homestead" means that property described in s. 6(a), Art. VII of the State Constitution.

A different statute, section 196.012(13), defines the specific phrase "real estate used and owned as a homestead" more narrowly:

> (13) "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 . . ."

That statute goes on to state that "property rented for more than 6 months is presumed to be used for commercial purposes." *Id.*

Section 192.001(8) defines the term "homestead" by simply referring to the standards laid out in article VII, section 6(a). Section 196.012(13), on the other hand, defines the more narrow standard that is used for determining the portions of homestead property that qualify for the more generous 100% tax exemption provided to certain disabled homeowners. [5] *See* §§196.081, 196.091, and 196.101, Fla. Stat. By including the phrase "but less any portion thereof used for commercial purposes" in section 196.012(13), the legislature indicated that it understood the article VII, §6(a) homestead exemption to *include* portions of property used for commercial purposes. If the legislature had believed that article VII, §6(a) inherently *excluded* property used for commercial purposes, this additional phrase would not have been necessary.

The fact that section 196.012(13) was not intended to apply to the homestead exemption is also evident by the fact that the

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[5] *But see Karayiannakis v. Nikolits*, 23 So. 3d 844 (Fla. 4th DCA 2009). The Property Appraiser argues in his Answer Brief that the Second District erred by not following the *Karayiannakis* case. But, of course, the *Karayiannakis* case was not binding on either the Second District or this Court. Moreover, from the decision, it does not appear that the Fourth District was squarely presented with the issues raised in this case as to the interpretation and validity of section 196.012(13), so the court's passing reference to the statute is not even persuasive.

statute's prohibition on renting property for more than 6 months directly conflicts with section 196.061, which addresses the effect of rental of homestead property. Section 196.061 specifically states that the rental of homestead property after January 1st of any tax year does *not* affect the homestead tax exemption for that year unless the property is rented for more than 30 days per calendar year for 2 consecutive years. If erroneously applied to the homestead exemption, the six-month rental restriction of section 196.012(13) would thus directly conflict with section 196.061, confirming once again that section 196.012(13) was never intended to apply to the homestead exemption.

i. Section 196.012(13) defines the stricter standard required to qualify for the more generous 100% tax exemption provided by sections 196.081, 196.091 and 196.101.

Essentially, in addition to the benefits described in article VII, §6(a), certain disabled recipients of the homestead exemption also qualify for a complete, 100% tax exemption on the portions of their homestead that are "used and owned as a homestead." *See id.* In Chapter 77-447, the legislature amended the requirements for the 100% tax exemption for disabled persons and, as part of that

process, added section 196.012(13), which defined "real estate owned and used as a homestead" as "real property to the extent provided in s. 6(a), Art. VII and s. 4(a)(1), Art. X of the State Constitution, but less any portion thereof used for commercial purposes." The legislature did not modify the requirements for a homestead exemption, which are set out in article VII, section 6(a) and reiterated in the definition of "homestead" in section 192.001(8). The legislature merely clarified that the 100% tax exemption for certain disabled homeowners could only be applied to those portions of the disabled person's homestead property that were not used for commercial purposes.

ii. If mistakenly applied to the regular homestead exemption of article VII, section 6(a) of the Florida Constitution, section 196.012(13) would be invalid, as it includes a substantive restriction that is not present in the Constitution.

If the definition contained in section 196.012(13) is interpreted and applied correctly to the 100% exemption offered by sections 196.081, 196.091 and 196.101 to certain disabled persons, then there is no constitutional issue to address. Thus, as the Second District correctly found that the statute was inapplicable to the

instant case, the Second District was correct in declining to address the constitutionality of the statute.

However, the property appraisers continue to assert that section 196.012(13) applies to homestead property under article VII, §6(a) of the Florida Constitution and, in *Karayiannakis*, the Fourth District mistakenly applied this statute to a homestead question, which has emboldened the property appraisers to continue mis-applying this statute. *If* section 196.012(13) were applicable to the homestead exemption, then the statute would be facially unconstitutional. If the phrase in that section were defined as "real property to the extent provided in s.6(a), Art. VII of the State Constitution," the statute could be validly applied to the homestead exemption. However, by adding the phrase "but less any portion thereof used for commercial purposes," the definition, on its face, sets forth a more restrictive standard than what is contained in the Constitution.

Constitutional provisions are superior to legislative enactments, and may not be altered, contracted or enlarged by legislative enactments. *See State v. West*, 69 So. 771, 123-24 (Fla. 1915). Article VII, §6(a) of the constitution provides that taxpayers

may only receive the homestead exemption "upon establishment of right thereto in the manner prescribed by law." The legislature is thus authorized to enact statutes relating to the *procedures* for obtaining a homestead exemption. *See Garcia v. Andonie*, 101 So. 3d 339, 345 (Fla. 2012).

However, the legislature does not have authority to create substantive restrictions on the right to the homestead exemption that are not contained in Article VII. *See id.* For example, the legislature cannot require applicants for the homestead exemption to have resided in Florida for one year. *See Sparkman v. Scott*, 58 So. 2d 431, 432 (Fla. 1952). Similarly, now that the Constitution allows exemptions for persons who are dependent on the owner, the legislature cannot require the owner to reside on the homestead property. *See Andonie*, 101 So. 3d at 345.

The Florida Constitution does not authorize the Property Appraiser to deny a homestead exemption or the Save Our Homes cap to rooms rented within a single-family residence. Thus, to the extent that section 196.012(13) excludes rented rooms within a single-family residence from qualifying for a homestead exemption, the statute would violate the Constitution. The application of

section 196.012(13) to article VII homestead exemptions would create a restriction that is not contained in the Constitution in that it would prevent homeowners who rent bedrooms or use portions of their property for a home office or other commercial purpose from receiving the full benefits of the article VII homestead exemption. Thus, the trial court correctly found that, if applied to the facts of the instant case, section 196.012(13) was unconstitutional.

The Property Appraiser contends that the Court should analyze this case like a substantive due process case, and uphold the statute as long as it is supported by a rational basis. However, Mr. Rebholz did not challenge the statute under the Due Process Clause. Mr. Rebholz's position has always been that the statute is constitutional if correctly applied, but that if incorrectly applied to the homestead exemption, it is in direct violation of article VII, section 6(a) of the Florida Constitution.[6] The Property Appraiser seems to contend that the legislature can ignore article VII and

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[6] In paragraph 22 of his Amended Complaint, Mr. Rebholz alleges that "section 196.012(13), Florida Statutes is invalid and unconstitutional as applied by the Property Appraiser, as it would exceed the authority of the legislature to impose an additional substantive restriction on the constitutional right to a homestead exemption." [R.91].

enact whatever legislation they like regarding the homestead exemption, as long as there is a rational basis for the legislation. However, in both *Sparkman* and *Andonie*, this Court properly invalidated statutes that conflicted with the express provisions of article VII, without a rational basis analysis, which would only be appropriate if the statute were challenged under the Due Process Clause. *See Sparkman*, 58 So. 2d at 432; *Andonie*, 101 So. 3d at 345.

B. Fla. Stat. 196.061 only applies when "all or substantially all" of the homestead property has been rented.

Had the legislature intended to prohibit a homeowner from receiving a homestead exemption on portions of their residence that are rented, the obvious place to address this issue would be section 196.061, Fla. Stat., which specifically addresses the effect of renting homestead property. Section 196.061 provides that:

> The rental of *all or substantially all* of a dwelling previously claimed to be a homestead for tax purposes shall constitute the abandonment of such dwelling as a homestead.

This statute conspicuously makes no mention whatsoever of the impact of renting a portion of a dwelling. The Second District correctly recognized the significance of this omission, stating:

> [Section 196.061] illustrates that the legislature has contemplated the effect that the rental of a dwelling has on the eligibility to claim the homestead exemption and has chosen to only effectuate a loss of the exemption if all or substantially all of the property is rented.

Rebholz, 302 So. 3d at 432. Given the legislature's express decision not to make this statute applicable to the rental of individual rooms within a dwelling, it is abundantly clear that the Property Appraiser's position is not supported by any claim of legislative intent.

C. Fla. Stat. 196.031(4) only allows apportionment of a homestead exemption when a portion of the property is classified and assessed as something other than owner-occupied residential property.

The only statutory basis for denying the homestead exemption to a portion of an improvement is section 196.031(4), which allows the property appraisers to deny an exemption to the portions of property that are not classified and assessed as owner-occupied residential property. Essentially, this statute allows property appraisers to deny the homestead exemption to portions of mixed-

use property that are classified as commercial or multi-family property. This is consistent with the constitutional and statutory provisions stating that the homestead exemption applies to the taxpayer's "residence." *See* Art. VII, §6(a), Fla. Const.; §196.031(1)(a), Fla. Stat. (applying the homestead exemption to the "residence and contiguous real property").

The Property Appraiser argues that the classification of the Property changed when the Property Appraiser decided to remove the homestead exemption from one of the bedrooms. However, the evidence does not support this contention. The Property Appraiser is required to classify property according to its use *for valuation purposes*. *See* Rule 12D-8.008, Fla. Admin. Code. The Department of Revenue provides classification codes for most types of real property, including but not limited to single family residential, multi-family, commercial and industrial property. *See* Rule 12D-8.008(2)(c). It was undisputed that the Property in the instant case was always classified for valuation purposes as owner-occupied residential property, as opposed to commercial or multi-family property. [R.88,99,230].

The Property Appraiser does not cite any evidence in the record to support his argument that he re-classified a portion of the Property as commercial property when he removed the homestead exemption. In fact, at trial, when directly asked whether the Property had been re-classified, the representative of the Property Appraiser's office was unable to testify that she had done anything other than change the amount of the Property that received the homestead exemption. [Tr.32-33].

It seems that the Property Appraiser mistakenly believes that the classification of the property automatically changed to multi-family or commercial on a retroactive basis when the homestead exemption was removed. However, under Florida law, the Property Appraiser cannot retroactively change the classification of the Property for valuation purposes. Property appraisers are not authorized to change a prior year's assessment based on a change in judgment, and are only authorized to correct factual errors, such as errors in the classification of property, if it would reduce the assessment, and if the change is made within one year of the approval of the tax roll. *See* §197.122(3), Fla. Stat.; Fla. Admin. Code R. 12D-8.021(2)(a)(7.). Thus, as the Property was classified

for valuation purposes as owner-occupied residential property, the Property Appraiser was required to apply the benefits of the homestead exemption to Rod Rebholz's entire residence.

III. AS APPLIED, DOR RULE 12D-7.013(5) IS INCONSISTENT WITH THE REQUIREMENTS OF THE CONSTITUTION AND STATUTES.

The Second District found that Rule 12D-7.013(5) conflicted with the Florida Statutes, and was thus an invalid exercise of delegated legislative authority. Rule 12D-7.013(5) provides that:

> Property used as a residence and also used by the owners 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 intent of the Rule was no doubt to assist the property appraisers in handling the thorny situations that can arise with mixed use properties. On its face, the Rule could be consistent with section 196.031(1)(a), Fla. Stat, which provides that the homestead exemption applies to "the residence and contiguous real property" and section 196.031(4), which only allows the homestead exemption to be applied to the portion of property classified as owner-occupied residential property. However, the Rule has been interpreted by property appraisers as authorizing them to apportion the

homestead exemption among rooms within a residence, regardless of how the property is classified and, to the extent that this Rule can be interpreted as allowing such apportionment, the Rule is contrary to the Florida Constitution and Statutes.

IV. THE SECOND DISTRICT'S DECISION DOES NOT AFFECT THE TREATMENT OF COMMERCIAL, MULTI-FAMILY OR MIXED-USE PROPERTIES.

This case involves the limited question of whether the property appraisers can remove the homestead exemption from rooms rented within a single-family residence that is used as the owner's permanent residence. The Property Appraiser has raised concerns about how this decision will affect mixed use properties, where an actual business is operated on the homestead property.[7] However, the Second District expressly limited its opinion to the facts in the instant case, holding only that "the property appraisers of this state are not authorized by law to carve up a homeowners' permanent

[7] The Property Appraiser claims that the Second District's decision would prevent him from partially removing the homestead exemption from a property which contains both a home and an auto repair shop. Presumably, in this situation, the auto repair shop would be classified and assessed as commercial property, and thus, section 196.031(4) would authorize the Property Appraiser to deny the exemption to the portion classified as commercial property.

residence in order to remove the protection provided by the constitutional homestead exemption when that person rents a bedroom or any other space within their home." *Rebholz*, 302 So. 3d at 434. The Second District did not extend its Opinion to commercial, multi-family or mixed-use properties and, in fact, the court expressly noted that:

> The issue of whether the establishment of a commercial enterprise upon property contiguous to the permanent residence would be subject to assessment for ad valorem taxation is not before this court, and nothing in this opinion should be read as addressing that issue.

Id. at 435 n.6.

The Property Appraiser and amicus curiae's primary concern seems to be the effect of the Second District's invalidation of Florida Administrative Code Rule 12D-7.013(5), which directed the property appraisers to apportion the homestead exemption between the portion of property used as a residence and the portion used as a place of business. However, the invalidation of this Rule does not affect the property appraisers' authority under section 196.031(4), Florida Statutes to apportion the homestead between the portion classified as owner-occupied residential property and any portion classified as commercial or multi-family property.

Section 196.031(4) provides that the homestead exemption only applies to the portions of property that are classified and assessed as owner-occupied residential property. Thus, if a portion of property is classified for assessment purposes as commercial or multi-family property, the property appraiser would be authorized by section 196.031(4) to deny a homestead exemption to that portion of the property.[8] [9] However, the only issue before the Court in this case is the proper treatment of rooms rented or used for home office purposes within a single-family residence.

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[8] Amicus curiae Miami-Dade County Property Appraiser described a situation in which a homeowner's unique residence was also used for weddings, events and as a filming location. The undersigned counsel represented the taxpayer in that matter and would dispute the appraiser's description of the facts. More importantly, despite the Second District's holding in *Rebholz*, the appraiser still chose to remove that taxpayer's homestead exemption and to record a lien for back taxes. Presumably, the appraiser would not have taken such steps if he believed, as claimed in his amicus brief, that the *Rebholz* decision applied to that factual situation.

[9] The outcome of the scenarios described in PAAF's amicus brief regarding mixed-use properties would depend on how the appraiser classified the property and, for the example involving the carriage house, whether, based on the facts, the carriage house is part of the "residence and contiguous property."

V. THE PROPERTY APPRAISER'S POSITION IS CONTRARY TO THE WILL OF THE VOTERS AS EXPRESSED IN THE CONSTITUTION AND THE LEGISLATURE'S INTENT IN CRAFTING THE ENABLING LEGISLATION.

It is common knowledge that rent prices have been skyrocketing, and in Florida, that has posed a particular difficulty for the many senior citizens living on fixed incomes. *See, e.g.*, Saundra Amrhein, *Where do we go? Sarasota seniors worry when even "affordable" housing costs spike*, SARASOTA HERALD-TRIB., June 4, 2022. In Sarasota, rents have climbed by over 50%, the highest rate in the nation, causing one nonprofit to create a program that pairs homeowners who have extra space in their house with renters seeking affordable housing. *See* Saundra Amrhein, *Home sharing could help in Sarasota's senior affordable housing crisis*, SARASOTA HERALD-TRIB., May 12, 2022. Renting spare rooms to people seeking affordable housing is laudable, and it is highly unlikely that the voters who approved the 1968 Constitution intended to penalize homeowners who rent spare rooms in their house by allowing property appraisers to remove their homestead exemptions and record tax liens against them for back taxes, penalties and interest.

Had the voters intended to discourage homeowners from sharing expenses with roommates or from working out of their home, they could easily have done so, but they did not. Voter intent can also be discerned from the fact that the Constitution expressly permits exemptions for renters who are permanent residents. *See* Art. VII, §6(c), Fla. Const. Although the legislature has chosen not to act on that authority, the fact that the voters approved homestead exemptions for renters clearly demonstrates a desire to apply the homestead tax exemption broadly, to a wide variety of living arrangements.

Likewise, the enabling legislation demonstrates an intent to allow homeowners to rent rooms within their home and to use their home for business purposes without losing the homestead exemption. This intent can be discerned from the following statutory provisions:

- Section 196.031 extended the homestead exemption to the "residence and contiguous real property."
- Section 192.001(8) defines "homestead" as "property described in s.6(a), Art. VII of the State Constitution,"

without any additional restrictions or limitations regarding portions used for commercial purposes.

- In drafting section 196.012(13), which provides the standard for the 100% exemption for certain disabled persons, the legislature included the phrase "but less any portion thereof used for commercial purposes." The legislature's inclusion of this phrase indicates that they understood that article VII, s. 6(a) does not exclude portions of property used for commercial purposes. If such a limitation were implicit in the constitution, this additional language would not have been necessary.
- The legislature expressly addressed the effect of rental of a dwelling in section 196.061, and chose not to impose any consequences for the rental of a portion of a dwelling.

Also, while they did not make it out of committee this year, bills were filed in both the Florida House of Representatives and Florida Senate in an attempt to clarify that rooms rented within a residence should not affect the owner's right to a homestead exemption.[10]

[10] These bills would have amended section 196.061, Florida Statutes to include the following sentence: "The rental of a portion

See SB 1056, 2022 Leg. (Fla. 2022); HB 1345, 2022 Leg. (Fla. 2022).

The Property Appraiser has attempted to downplay the damage suffered by Mr. Rebholz by emphasizing that he only lost the homestead exemption on a small percentage of his residence. However, when the Property Appraiser determines that a taxpayer should not have been receiving the homestead exemption or Save Our Homes cap in prior tax years, the Property Appraiser is authorized to record a tax lien for up to ten years of back taxes, plus a 50% penalty and 15% interest, which is what happened in the instant case. The recording of a such a tax lien is financially devastating for most homeowners, especially given that the average homeowner likely has no idea that their rental of spare rooms in their home could result in such catastrophic consequences. It is also completely unecessary, as the Constitution and Statutes do not in any way compel the Property Appraiser to remove the homestead exemption from portions of a homeowner's residence.

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of a dwelling claimed to be a homestead for tax purposes while the dwelling is physically occupied by the owner does not constitute the abandonment of the dwelling as a homestead."

Sadly, the *Rebholz* case is not an anomaly, as the undersigned counsel has other clients who, even after the Second District's decision, have been subjected to tax liens due to their rental of a room in their residence. For most taxpayers, the cost of litigating such a case would easily exceed the amount of the tax lien, especially if required to defend multiple appeals. For this reason, it is essential that the Court take this opportunity to clarify that the removal of a homestead exemption and recording of a tax lien for rooms rented within a property owner's permanent residence is not authorized by the Florida Constitution or Statutes.

CONCLUSION

WHEREFORE, Respondent Don Rebholz, as Trustee of the Rebholz Family Revocable Trust respectfully requests that this Court affirm the Opinion of the Second District Court of Appeal.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by electronic mail to J. Geoffrey Pflugner at jpflugner@icardmerrill.com, Jason A. Lessinger at jlessinger@icardmerrill.com, and lkarpova@icardmerrill.com, Anthony Manganiello at amanganiello@icardmerrill.com, and lkarpova@icardmerrill.com, Patrick Seidensticker at pseidensticker@icardmerrill.com, Bora S. Kayan at bkayan@scgov.net, Robert P. Elson at robert.elson@myfloridalegal.com, jon.annette@myfloridalegal.com, and lisa.ryder@myfloridalegal.com , Loren E. Levy at eservice@levylawtax.com and gmsmith@levylawtax.com, John C. Dent, Jr. at jdent@dentmcclain.com, Jennifer A. McClain at jmcclain@dentmcclain.com, Jorge Martinez-Esteve at jme@miamidade.gov and kih@miamidade.gov, and Daija Page Lifshitz at daija@miamidade.gov and Jessica.prieto@miamidade.gov on this 22nd day of June 2022.

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CERTIFICATE OF COMPLIANCE

Counsel for Respondent Don Rebholz certifies that Respondent's Answer Brief is typed in 14 point (proportionately spaced) Bookman Old Style font, and complies with the applicable font and word count limit requirements.

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