

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 Rod Rebholz  
Revocable Trust,

Respondent.

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ON DISCRETIONARY REVIEW FROM THE  
SECOND DISTRICT COURT OF APPEAL

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**BRIEF ON JURISDICTION  
OF RESPONDENT DON REBHOLZ**

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## STATEMENT OF THE CASE AND FACTS

Rod Rebholz, as Trustee of the Rod Rebholz Revocable Trust [hereinafter “Rod Rebholz”] owned a single-family residence which, at all relevant times, was classified and assessed by the Sarasota County Property Appraiser as owner-occupied residential property. Mr. Rebholz maintained the property as his permanent residence. However, during the 2004-13 tax years, he rented out one or two of his upstairs bedrooms to third parties. Upon learning that Mr. Rebholz was renting one of the bedrooms, the Property Appraiser retroactively removed the homestead exemption from 15% of Mr. Rebholz’s property for the 2004-13 tax years and recorded a \$7,023.87 tax lien on the property for back taxes, penalties and interest.

Mr. Rebholz brought an action to challenge the Sarasota County Property Appraiser’s actions.<sup>1</sup> The first count challenged the Property Appraiser’s removal of the homestead exemption and imposition of a tax lien. The second count challenged the constitutionality of the Property Appraiser’s application of section 196.012(13), Florida Statutes. Mr. Rebholz contended that the definition of “real estate used and owned as a homestead” of section 196.012(13) only applied to certain complete

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<sup>1</sup> When Rod Rebholz died, his son, Don Rebholz [hereinafter “Respondent”] was appointed the Successor Trustee and was substituted as Plaintiff. The Respondent opted to pay off the tax lien so as to stop the accrual of interest. Thus, the Complaint was amended to seek a refund of the taxes paid, rather than cancellation of the tax lien.

exemptions from taxation (such as the exemptions for disabled veterans), and that the Property Appraiser's improper application of that statute to Mr. Rebholz's regular Article VII homestead exemption violated the Florida Constitution.

The trial court entered judgment in favor of Mr. Rebholz on both counts. On Count 1, the court found that, as long as Mr. Rebholz's property was classified and assessed as owner-occupied residential property and maintained as his permanent residence, the Florida Constitution did not authorize the Property Appraiser to remove a portion of the homestead exemption for a room rented to a tenant. As to Count 2, the trial court found that, as applied to Mr. Rebholz's Article VII homestead exemption, section 196.012(13) was unconstitutional, as it would impermissibly impose an additional substantive restriction on Mr. Rebholz's right to the homestead exemption.

On appeal, the Second District affirmed the trial court's final judgment in favor of Mr. Rebholz on Count 1 based on its conclusion that neither the Florida Constitution or statutes authorize the division of a homestead based on the owner's rental of a bedroom or other space to a residential tenant. On Count 2, the court held that the trial court need not have considered the constitutionality of section 196.012(13) since, on its face, the statute was not applicable to Mr. Rebholz's claim for an Article VII homestead exemption. The court also held that Rule 12D-7.013(5), which authorized the division of a homestead used partly as a place of

business into exempt and non-exempt portions, was an invalid exercise of delegated legislative authority.

In its Opinion, the Second District acknowledged the Fourth District's opinion in *Karayiannakis v. Nikolits*, 23 So. 3d 844 (Fla. 4<sup>th</sup> DCA 2009), but explained that it was distinguishable from the instant case, as the property appraiser in *Karayiannakis* had not attempted to divide the owner's living unit into exempt and non-exempt portions. Rather, the *Karayiannakis* case involved the property appraiser's treatment of the land surrounding the property owner's multi-family apartment building. In a footnote to its Opinion, the Second District specifically stated that its Opinion was not intended to address the issue in *Karayiannakis* of whether a commercial enterprise upon property contiguous to the permanent residence would be subject to taxation.

In considering the applicability of Rule 12D-7.013(5), which directed 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, the court noted that the rental of bedrooms in a single-family residence does not create a "place of business," especially where the tenants share the common areas. The court also held that the Rule was an invalid exercise of delegated legislative authority, since the Florida Constitution and statutes do not authorize such a division.

The Second District found it significant that, when the legislature addressed

the effect of rental of a home on an owner's right to the homestead exemption, the legislature only addressed the rental of all or substantially all of a dwelling. While section 196.061, Florida Statutes authorizes the removal of the homestead exemption when all or substantially all of a dwelling is rented, the statute is conspicuously silent on the impact of an owner's rental of a room or other space within a dwelling. In conclusion, the Second District held that:

[T]he property appraisers of this state are not authorized by law to carve up a homeowner's permanent 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. Any interpretation to the contrary would circumvent public policy and could create financial hardship for countless Florida citizens who reside within their permanent residences while renting bedrooms or working from home to make ends meet.

The court thus affirmed the trial court's final judgment in favor of Mr. Rebholz as to Count 1. However, the court reversed the final judgment in favor of Mr. Rebholz on Count 2, because if section 196.012(13) had been interpreted correctly and not applied to Mr. Rebholz's claim for a regular Article VII homestead exemption, the trial court would not have needed to consider the statute's constitutionality.

## SUMMARY OF ARGUMENT

This Court does not have conflict jurisdiction because the Second District’s Opinion does not expressly and directly conflict with decisions of any other district courts, as the Fourth District’s decision in *Karayiannaikis* is factually distinguishable. The Opinion could, in theory, affect other county property appraisers who take the same aggressive approach to the homestead exemption by partially removing the exemption when a homeowner takes a roommate. However, to the extent that this gives rise to jurisdiction, the Court should decline to review the Second District’s Opinion because the Opinion is consistent with the Constitution and Florida Statutes, is narrowly-tailored to the unique facts of the instant case, and involves a relatively small amount of taxes with a minimal impact on the taxing authorities.

## **ARGUMENT**

I. THE OPINION DOES NOT EXPRESSLY AND DIRECTLY  
CONFLICT WITH THE FOURTH DISTRICT’S DECISION  
IN *KARAYIANNAKIS V. NIKOLITS*.

Pursuant to Article 5, section 3 of the Florida Constitution, this Court may review any decision of a district court of appeal that “expressly and directly conflicts with a decision of another district court of appeal or of the supreme court on the same question of law.” However, where the allegedly conflicting cases are factually distinguishable, this Court does not have jurisdiction. *See Department of*

*Revenue v. Johnston*, 442 So. 2d 950, 951-52 (Fla. 1983). Here, the only potentially conflicting case cited by the Petitioner, *Karayiannakis v. Nikolits*, 23 So. 3d 844 (Fla. 4<sup>th</sup> DCA 2009), is factually distinguishable from the instant case.

Specifically, the issue before the Second District in the instant case was whether the Property Appraiser had the authority remove a homestead exemption from a portion of single-family residence. *Karayiannakis*, on the other hand, involved a multi-family apartment building, not a single family residence. *See id.* at 845. The Fourth District was not asked to determine whether the property appraiser had authority to remove the homestead exemption from a portion of the taxpayer's living unit, or even a portion of the apartment building, as the parties had already stipulated that only 37% of the apartment building qualified for the homestead exemption. *See id.* The only issue before the court in *Karayiannakis* was, given that stipulation, whether the taxpayer was entitled to a homestead exemption on all of the contiguous real property. *See id.* The *Karayiannakis* case was thus factually distinguishable because it did not involve property that had been classified and assessed as owner-occupied residential property. Also, the Second District expressly stated in footnote 6 of its Opinion that the issue before the *Karayiannakis* court – the apportioning of the contiguous land – was not before the court, and that the Second District's Opinion was not intended to address that issue.

Nor was the *Karayiannakis* court asked to determine the validity or applicability of section 196.012(13), Florida Statutes. In *Karayiannakis*, the court cited section 196.012(13) without any discussion as to whether or why it would apply to a regular Article VII homestead exemption, as opposed to the 100% tax exemption available to certain disabled persons. *See id.* at 846. In contrast, the Second District in the instant court was squarely faced with those questions. Thus, the fact that the Fourth District made a passing reference to section 196.012(13) is insufficient to create the express and direct conflict with the Second District that is necessary to confer jurisdiction on this Court.

II. WHILE THE OPINION COULD AFFECT THE STATE'S OTHER PROPERTY APPRAISERS, THIS COURT SHOULD DECLINE REVIEW.

Pursuant to Article 5, section 3 of the Florida Constitution, this Court may review any decision of a district court of appeal that expressly affects a class of constitutional or state officers. The Petitioner is a constitutional officer and, in theory, the Opinion could affect other property appraisers. However, if applied that broadly, this Court would arguably have discretionary jurisdiction over all property tax cases in which an appellate court renders a decision, and it seems unlikely that this provision was intended to be construed so broadly.

Regardless, the Court should decline to review this case, as the Second District's Opinion does not have the widespread ramifications that would justify

review by this Court. First, the amount in question is only \$7,023.87, and thus the Second District's Opinion will have a nominal impact on the taxing authority's coffers, compared to the cost of continued litigation. Second, given that this is the first time the issue has been addressed by an appellate court in the long history of Florida's homestead tax exemption, it would seem that this is not a widespread practice among county property appraisers. Thus, while the Opinion *could* impact all county property appraisers, in reality, it will only impact those property appraisers, if any, who have taken the same extreme position as the Sarasota County Property Appraiser in removing homestead exemptions from portions of single-family homes when the owner rents out a room or works from home.

Finally, the Petitioner's concerns about the breadth of the Opinion are unfounded, as the Second District was careful to narrowly tailor its ruling to situations like the instant case where a homeowner rents rooms or works out of their home. The court's holding was stated thus:

[T]he property appraisers of this state are not authorized by law to carve up a homeowner's permanent 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. Any interpretation to the contrary would circumvent public policy and could create financial hardship for countless Florida citizens who reside within their permanent residences while renting bedrooms or working form home to make ends meet.

The Opinion does not impact properties that are fully or partially classified and assessed as something other than owner-occupied residential property. Under

section 196.031(4), properties that are partially classified as multi-family or commercial properties are only entitled to a homestead exemption on the portion of the property that is classified as owner-occupied residential property. However, that was not the situation in the instant case, where Mr. Rebholz's residence was classified and assessed as owner-occupied residential property.

The court's holding is consistent with article VII, section 6 of the Florida Constitution and section 196.031, Florida Statutes, which allow a homestead exemption for the taxpayer's permanent residence and contiguous property. It is also consistent with section 196.031(4), Fla. Statutes, which only allows for denial of the homestead exemption to portions of property that are not classified and assessed as owner-occupied residential property. Where, as here, the property is an owner-occupied single-family residence, section 196.061(1) only allows for removal of the homestead exemption if all or substantially all of the property is rented. Thus, the Second District correctly held that there is no legal authority for partially removing the homestead exemption from a rented room or home office.

The Opinion is also consistent with the policy behind the homestead exemption. The Second District recognized that the purpose of the homestead exemption is to enable citizens to live beyond the reach of financial misfortune, and that financially penalizing citizens for renting space in or working out of their homes is not in line with that goal. This is even more true today, when due to the

COVID-19 pandemic, more people than ever are working from home and sharing their housing costs to help make ends meet. The speculative consequences to the taxing authorities are overwhelmingly outweighed by the negative consequences that would result from adopting the Property Appraiser's position, which could result in tax liens being imposed on the many homeowners who have been renting rooms or working out of their homes. Thus, this Court should decline to exercise its jurisdiction, and allow the well-reasoned Opinion of the Second District to stand without further appellate review.

### **CONCLUSION**

WHEREFORE, Respondent Don Rebholz, as Trustee of the Rod Rebholz Revocable Trust, respectfully requests that this Court decline to review 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](mailto:jpflugner@icardmerrill.com) and [dmartin@icardmerrill.com](mailto:dmartin@icardmerrill.com), Jason A. Lessinger at [jlessinger@icardmerrill.com](mailto:jlessinger@icardmerrill.com), and [lkarpova@icardmerrill.com](mailto:lkarpova@icardmerrill.com), Anthony Manganiello at [amanganiello@icardmerrill.com](mailto:amanganiello@icardmerrill.com), Robert P. Elson at [robert.elson@myfloridalegal.com](mailto:robert.elson@myfloridalegal.com), [jon.annette@myfloridalegal.com](mailto:jon.annette@myfloridalegal.com), and [lisa.ryder@myfloridalegal.com](mailto:lisa.ryder@myfloridalegal.com), Loren E. Levy at [eservice@levylawtax.com](mailto:eservice@levylawtax.com) and [gsmith@levylawtax.com](mailto:gsmith@levylawtax.com), Jennifer A. McClain at [jmccclain@dentmccclain.com](mailto:jmccclain@dentmccclain.com), John C. Dent, Jr. at [jdent@dentmccclain.com](mailto:jdent@dentmccclain.com), Jorge Martinez-Esteve at [jme@miamidade.gov](mailto:jme@miamidade.gov) and [kih@miamidade.gov](mailto:kih@miamidade.gov), and Daija Page Lifshitz at [daija@miamidade.gov](mailto:daija@miamidade.gov) and [Jessica.prieto@miamidade.gov](mailto:Jessica.prieto@miamidade.gov) on this 17<sup>th</sup> day of November 2020.

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**CERTIFICATE OF COMPLIANCE**

Counsel for Respondent Don Rebholz certifies that Respondent's Brief on Jurisdiction is typed in 14 point (proportionately spaced) Times New Roman font.

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