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
T/C Case No.:2015 CA 001039 NC

ROD REBHOLZ, as Trustee of Rod
Rebholz Revocable Trust,

Respondent.
_____/

Originating Court: Second District Court of Appeal

BRIEF OF PETITIONER ON JURISDICTION

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I. STATEMENT OF THE CASE AND FACTS

Rod Rebholz owned a single-family residence in Sarasota County since 1993 (the "Property"). In 1996, Rebholz applied for and received an ad valorem real property homestead tax exemption (the "Homestead Tax Exemption") on the Property. During the time he owned the Property, however, Rebholz re-modeled the home so that it effectively was designed as a boarding house consisting of five separate living units, each with their own separate bath, air conditioning unit, and closet; with kitchenettes in several. In 2014, the Petitioner discovered that the Property had been re-modeled, and that from 1996 through 2014, Rebholz rented out one or more of the living units to tenants pursuant to written lease agreements. During that time Rebholz filed at least two eviction actions to remove tenants from the Property.

The Petitioner ultimately determined 15% of Rebholz's property did not qualify for the Homestead Tax Exemption because Rebholz had given up exclusive possession of that portion of the homestead to a tenant.[1] The Petitioner therefore removed the benefit of the Homestead Tax Exemption from 15% of the Property. 85% of the Property was treated as Rebholz's homestead and received

[1] At least 50% of the Property had been designed and prepared as separate living units, but the Petitioner only removed the exemption from that portion actually rented at the time of the Petitioner's inspection.

the full benefit of the $50,000.00 Homestead Tax Exemption. The only impact on Rebholz's tax liability was that the 3% maximum cap on increases in assessed value provided by the Homestead Tax Exemption was removed from the 15% of the Property Rebholz rented out. That portion was instead subject to a 10% cap and a one-time tax obligation for prior years' unpaid taxes, plus a penalty and interest. The Petitioner adjusted the assessed value and recorded a tax lien in the amount of $7,023.87 for the years at issue. Rebholz brought suit in response, claiming the lien was unlawful under Florida Statute Chapter 196, and alternatively claiming Section 196.012(13) was unconstitutional as applied. Section 196.012(13) provides:

> "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.

At trial, the court determined Rebholz was entitled to the Homestead Tax Exemption on the entire Property, because he had not rented out all or substantially all of his dwelling. Had he done so, it would have constituted abandonment under Florida Statute Section 196.061(1), which provides that rental of all or substantially all of the homestead for more than 30 days in two consecutive calendar years constitutes abandonment of the entire

homestead. The trial court also declared Section 196.012(13) unconstitutional as applied.

The Petitioner appealed the trial court decision, joined by the Property Appraiser's Association of Florida, Inc. ("PAAF") as *Amicus Curiae*.[2] The Second District affirmed the final judgment, albeit while determining Florida Statute Section 196.012(13) was in fact constitutional, but simply inapplicable to the facts of this case. The Second District then declared Florida Administrative Code Rule 12D-7.013(5) unconstitutional as an invalid exercise of delegated legislative authority. That rule states:

> 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.

II. SUMMARY OF ARGUMENT

The Second District, by invalidating the very rule that allows a Florida county property appraiser ("Property Appraiser(s)") to apportion a homestead between its business use and residential use, has eliminated the ability of any Property Appraiser to do so under any circumstance. The Opinion creates a blanket rule

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[2] The PAAF primarily addressed the constitutionality of Section 196.012(13), but also outlined the history of how rental of a homestead always has been considered abandonment of the homestead, such that rental of a portion of the home precludes a homestead on that portion.

providing a full Homestead Tax Exemption to all qualifying Florida residents occupying a parcel of real property in Florida, regardless of how much or how little of the property the owner actually has a right to utilize as his or her homestead and regardless of the amount of rental income or its equivalent the property owner receives by commercializing the structure in which they live, as long as they do not rent out "all or substantially all" of the residence.

The Opinion makes it impossible for Property Appraisers to properly apportion real property between its commercial use and non-commercial use for purposes of the Homestead Tax Exemption. The Opinion has far reaching implications, as it applies to ***all*** Property Appraisers and prevents them from properly apportioning the assessed value of homestead properties between their exempt and non-exempt use. The Opinion is contrary to legislative and case authorities calling for apportionment for purposes of ad valorem taxation based on the actual uses made of the property.

Florida's system of ad valorem taxation provides for a uniform method of assessment as between property within each county and property in every other county. The Florida Constitution establishes Property Appraisers as a class of constitutional officers. A decision which affects one Property Appraiser can affect Property Appraisers throughout the state.

The Homestead Tax Exemption was created to protect Florida's elderly and working poor from increases in their taxes due to escalating property values. *Smith v. Welton*, 729 So.2d 371, 373 (Fla. 1999) (Superseded by statute, as stated in *Robbins v. Kornfeld*, 834 So.2d 955, 957 (Fla. 2003)). It was ***not*** intended to protect commercial use. Applying the Homestead Tax Exemption to such uses is contrary to the Florida Constitution and the Statutes implementing it.

Under the Opinion, if a qualified property owner resides in some portion of a single family residence otherwise eligible for the Homestead Tax Exemption, they are entitled to such exemption on the entire property, even if they give up legal possession of a portion by renting it out to third parties. The property tax reduction generated by applying the Homestead Tax Exemption in this manner places the obligation for the payment of such taxes upon the remaining taxpayers of the jurisdiction, thereby allowing the property owner to avoid paying their fair share.

III. ARGUMENT FOR JURISDICTION

A. The Opinion Expressly and Materially Affects this State's Property Appraisers, a Class of Constitutional Officers.

Florida Statute Section 195.0012 "provide[s] for a uniform assessment as between property within each county and property in every other county or taxing district." The Florida Constitution, at Article VIII, Section 1(d), establishes Property Appraisers as constitutional officers within their respective counties.

Property Appraisers comprise a class of constitutional officers and decisions which affect one Property Appraiser can, and usually do, affect each Property Appraiser throughout the state. *Fla. State Bd. of Health v. Lewis*, 149 So. 2d 41, 42-43 (Fla. 1963). Thus, discretionary review is authorized. *See, e.g., Bystrom v. Whitman*, 488 So. 2d 520 (Fla. 1986).

Property Appraisers throughout Florida apportion ad valorem property tax assessments (including exclusions therefrom) based upon the actual uses made of the property. Monroe County routinely apportions homesteads based on simultaneous use of a portion for non-homestead purposes. In the event this Court grants discretionary jurisdiction, the Monroe County Property Appraiser intends to request leave to file an *Amicus* brief, as does PAAF.

Property Appraisers routinely apportion homestead properties when taxpayers utilize their property as a primary residence and also a place of business. One example of this is a home day care business operated out of the business owner's residence. The Property Appraiser apportions the use between its homestead use and its business use, as authorized and directed by Florida Administrative Code Provision Rule 12D-7.013(5), quoted above. The Second District, by invalidating this Rule, has eliminated the ability of any Property Appraiser to apportion a home between its exempt use and non-exempt use.

The Second District invalidated the Rule while claiming "[n]othing in chapter 196 even references —let alone authorizes the property appraiser to effectuate —the division of a homeowners' permanent residence for ad valorem taxation purposes." Florida Statute Chapter 196, however, repeatedly contemplates apportionment of homestead property ("the exemption **may be apportioned** among such of the owners as reside thereon . . . ." Section 196.031(a); "the exemption . . . applies . . . only to the **portion** of the property so classified or assessed." Section 196.031(4)). The Second District's conclusion demonstrates their holding is far broader than they suggest. It will significantly impact how homestead property is valued by changing the manner in which Property Appraisers have historically apportioned use.

The Opinion is of exceptional importance because it impinges upon the public policy in the State of Florida that all taxpayers must bear their share of the common tax burden. *See, Smith v. Krosschell*, 937 So. 2d 658, 663 (Fla. 2006). In addition, it impinges upon the established maxim that both constitutional provisions and statutes creating tax exemptions must be construed strictly against the taxpayer and in favor of the taxing power. *Steuart v. State ex rel. Dolcimascolo*, 161 So. 378, 379 (Fla. 1935). In the face of this long-established maxim, the panel broadly construed Article VII, Section 6, of the Florida Constitution to allow commercial profit-making uses of residential

property to fall within the Homestead Tax Exemption when same is plainly not contemplated under the Florida Constitution.

The Opinion goes well beyond the Panel's determination that "the rental of bedrooms and common spaces in a single-family permanent residence does not create 'a place of business'" as contemplated under Rule 12D-7.013. The Opinion instead eliminates the rule that allows a Property Appraiser to apportion homestead property based on any business use.

Furthermore, Florida Statute Section 196.061, addressing rental of homesteads, dictates that a taxpayer abandons their homestead if they rent all or substantially all of the home for more than thirty days in two consecutive years. In other words, if a residential property owner rents their home out for only 31 days (or more) in consecutive years, **they lose the entire Homestead Tax Exemption** despite residing in the entire residence for most of the year. In this case, Rebholz designed his property as a boarding house, entered written rental agreements with tenants, and rented out at least one specific, stand-alone unit within the Property for over 15 years, thereby giving up any right to possess that portion. Yet, he is allowed to maintain his entire Homestead Tax Exemption. The ruling therefore conflicts with legislative intent as to commercializing a homestead.

The Opinion creates a significant loophole in the administration of the Homestead Tax Exemption. The mischief

invited is obvious, as it lays out a road map for property owners to follow to monetize a majority of their residence, while still enjoying a full Homestead Tax Exemption on the entire property. The mischief will only continue to increase as more home-based businesses and short term on-line rental services provide easy ways for homeowners to utilize portions of their primary residences for profit-making endeavors.

The Opinion has far reaching effects on ad valorem real property taxation generally, and in the administration of the Homestead Tax Exemption specifically. It impacts established Florida public policy and established Florida law.

B. The Opinion Expressly and Directly Conflicts with the decision in *Karayiannakis v. Nikolits*, 23 So. 3d 844 (Fla. 4th DCA 2009).

The Opinion also directly conflicts with *Karayiannakis v. Nikolits*, 23 So. 3d 844, 846-47 (Fla. 4th DCA 2009). The *Karayiannakis* court allowed apportionment of the land constituting a taxpayer's homestead because the taxpayer was renting out portions of the property, finding:

> "Real property" is defined as "land, buildings, fixtures, and all other improvements to land." § 192.001(12), Fla. Stat. (2007). Thus, any portion of a person's land, buildings, fixtures, and other improvements that is being used for commercial purposes does not qualify as "real estate used and owned as a homestead."
>
> In addition to these definitions, the legislature imposed express limitations on the property tax exemption and assessment cap for homestead property.

> The tax exemption "applies only to those parcels classified and assessed as owner-occupied residential property or only to the portion of property so classified and assessed." § 196.031(5), Fla. Stat. (2007) (emphasis added). And only property that receives a homestead exemption is subject to section 193.155, Florida Statutes (2007), the codification of article VII, section 4(d)'s assessment cap for homestead property.
>
> The language in these statutes shows that real property is divisible for tax exemption purposes and that the special tax treatment afforded to homestead property in article VII, sections 4(d) and 6 does not apply to non-homestead property. Property used for commercial purposes, which includes rental property, is non-homestead property. Accordingly, the appellant is not entitled to special tax treatment for the portion of her property that she rents to tenants. Our holding is supported by public policy, which favors construing tax exceptions and exemptions against the taxpayer. *See Markham v. PPI, Inc.*, 843 So. 2d 922, 925 (Fla. 4th DCA 2003).

Karayiannakis conflicts with the Opinion, which concludes "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."

IV. CONCLUSION

This Court should accept jurisdiction as the Opinion expressly and materially affects each and every Property Appraiser and impairs their ability to properly assess commercial uses of homestead properties. In doing so, the Opinion expressly and directly conflicts with *Karayiannakis v. Nikolits*, 23 So. 3d 844 (Fla. 4th DCA 2009).

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was filed via the Florida Courts e-Filing Portal and delivered by e-service through to: Sherri L. Johnson, Esq., JOHNSON LEGAL OF FLORIDA, P.L., 2937 Bee Ridge Rd. Suite 1, Sarasota, FL 34239, sjohnsson@johnsonlegalfl.com, Attorneys for Plaintiff, and Robert P. Elson at robert.elson@myfloridalegal.com, lisa.ryder@myfloridalegal.com, jon.annette@myfloridalegal.com, Attorneys for LEON M. BIEGALSKI, and Bora S. Kayan, Esq., Assistant County Attorney, 1660 Ringling Boulevard, 2nd Floor, Sarasota, FL 34236 bkayan@scgov.net , Attorneys for Defendant Ford-Coates, on *October 13*, 2020.

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CERTIFICATE OF COMPLIANCE

I certify that this Brief satisfies the requirements of Rules 9.100(1) and 9.210(a)(2) in that this computer generated brief is formatted in Courier New 12 point font.

Anthony Manganiello, Esquire