SC20-1479

IN THE SUPREME COURT OF FLORIDA

BILL FURST, ET. AL.,
Petitioner,

v.

ROD REBHOLZ, ET AL.,
Respondents.

ON APPLICATION FOR DISCRETIONARY REVIEW FROM THE DISTRICT COURT OF APPEAL, SECOND DISTRICT OF FLORIDA
Case No. 2D18-3323

Petitioner State of Florida, Department of Revenue's Reply Brief

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ARGUMENT

In his Answer Brief, Rebholz acknowledges that Rule 12D-7.013(5), F.A.C., may be facially construed as consistent with Sections 196.031(1)(a) and 196.031(4), *Florida Statutes*. (AB, p. 30) But Rebholz goes on to assert, without citing to any authority or record evidence, that the Rule "[H]as 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." (AB, pp. 30-31). Rebholz essentially argues that Rule 12D-7.013(5) impermissibly enlarges, modifies, or contravenes the Florida Constitution and statutes. *See generally State Farm Florida Ins. Co. v. Unlimited Restoration Specialists, Inc.*, 84 So. 3d 390 (Fla. 5th DCA 2012); *Willette v. Air Products*, 700 So. 2d 397 (Fla. 1st DCA 1997). However, Rebholz fails to identify the constitutional or statutory provisions that the Rule is alleged to violate.

Administrative rules are entitled to a presumption of constitutional validity and should be interpreted, if possible, in a manner that preserves their validity. *See Colding v. Herzog,* 467 So. 2d 980, 983 (Fla.1985). *See*

also, Fogarty Bros. Transfer, Inc. v. Boyd, 109 So. 2d 883, 888 (Fla.1959) ("As often pointed out, rules of the [agency] are cloaked in a presumption of statutory validity which places on the petitioners the burden of proving their invalidity."). It is important to note that Rebholz did not challenge the validity of Rule 12D-7.013(5), F.A.C., in either the Circuit Court or Second District actions below. Had Rebholz raised such a challenge in the Circuit Court, the Department would have sought dismissal of such a claim for failure to exhaust administrative remedies. *See, Key Haven Associated Enterprises, Inc. v. Board of Trustees of Internal Imp. Trust Fund*, 427 So. 2d 153, 158 (Fla. 1982) (A suit in the circuit court requesting that court to declare an agency's action improper because of such a constitutional deficiency in the administrative process should not be allowed.... [A]dministrative remedies must be exhausted to assure that the responsible agency "has had a full opportunity to reach a sensitive, mature, and considered decision upon a complete record appropriate to the issue."). *See also, Florida Marine Fisheries Com'n (Div. of Law Enforcement) v. Pringle*, 736 So. 2d 17, 22-23 (Fla. 1st DCA 1999) (Unlike facial constitutional challenges to statutes, judicial challenges to administrative rules must await exhaustion of available administrative remedies). Rather, the Second District invalidated Rule 12D-

7.013(5) *sua sponte*.[1] Rebholz, therefore, avoided his burden of proving the Rule to be invalid, and the Department was deprived of the "[O]pportunity to reach a sensitive, mature, and considered decision upon a complete record appropriate to the issue." *Key Haven,* 427 So. 2d at 158.

Rule 12D-7.013(5) does not violate Art. VII, Section 6(a), of the Florida Constitution. As the Department established in its Initial Brief, that provision clearly limits the homestead exemption based on ownership and use – the owner, or holder of legal or equitable title, must maintain on the property the permanent residence of the owner, or another legally or naturally dependent on the owner.[2] Further, a property owner's right to claim the homestead tax exemption is not self-executing, since Article VII, Section 6(a), conditions the exemption upon establishment of the right in accordance with the manner prescribed by law. *Horne v. Markham*, 288 So. 2d 196, 199 (Fla. 1973);

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[1] The Department acknowledges that since Property Appraiser argued in his briefing and at oral argument in the Second District that Rule 12D-7.013(5) further supported apportionment of the homestead exemption in this case, such argument made Rule 12D-7.013(5) fair game for the Second District's consideration.

[2] Second District Judge Atkinson astutely and correctly recognized in his dissent that "Rebholz did not 'maintain[]' his 'permanent residence' in the rooms in which others maintained their own residence pursuant to a rental agreement. See art. VII, § 6, Fla. Const." *Furst v. Rebholz*, 302 So.3d 423, 435 (Fla. 2d DCA 2020).

Zingale v. Powell, 885 So. 2d 277, 284-85 (Fla. 2004) (reaffirming the holding of *Horne* and extending its reasoning to hold that there is no self-executing right to the "Save Our Homes" cap found in Article VII, Section 4, of the Florida Constitution).

The Department further identified in its Initial Brief those portions of Chapter 196 giving textual support for Rule 12D-7.013(5) which clearly reflect legislative policy and state what the law is, to wit: qualification for the homestead tax exemption is dependent upon ownership and use, and the exemption is to be applied only to that portion of property used as the owner's permanent residence. None of the implementing statutory provisions which provide for apportionment based on ownership and use contain an exception for rooms rented within a single residence. If the legislature intended such an exception, it would have provided one. Rebholz seems to read such an exception into the implementing statutory provisions and seems to expect this Court to do the same. However, "[The] courts, after all, exist not to re-draft the laws of this State, but rather to interpret what has been given to us by those tasked with that responsibility." *Endsley v. Broward County*, 189 So. 3d 938, 941 (Fla. 4th DCA 2016).

Again, Rule 12D-7.013(5) fairly implements Article VII, Section 6 and the implementing provisions of Chapter 196, and is consistent with prevailing principles of Florida property tax law that qualification for property tax exemptions, and apportionment of property for exemption purposes, is based on ownership and use.

CONCLUSION

Based upon the authorities cited herein, the Department respectfully requests that this Court reverse the decision of Second District Court declaring Rule 12D-7.013(5) an invalid exercise of delegated legislative authority.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy hereof was furnished on August 31st, 2022, via email to: Sherri L. Johnson, Esquire, Johnson Legal of Florida, P.L., 5602 Marquesas Circle, Suite 208, P.O. Box 20998, Sarasota, Florida 34276, sjohnson@johnsonlegalfl.com; John Geoffrey Pflugner, Esquire, Jason A. Lessinger, Esquire, Anthony J. Manganiello, III, Esquire, Icard Merrill Cullis Timm, et al., 32033 Main Street, Suite 600, Sarasota, Florida 34237, jpflugner@icardmerrill.com, dmartin@icardmerrill.com, jlessinger@icardmerrill.com, thashem@icardmerrill.com, lkarpova@icardmerrill.com, amanganiello@icardmerrill.com; Bora S. Kayan, Assistant County Attorney, Office of the County Attorney, 1660 Ringling Blvd., 2nd Floor, Sarasota, Florida 34236, bkayan@scgov.net; Loren Levy, Esquire, The Levy Law Firm, 1828 Riggins Lane, Tallahassee, Florida 32308, llevy@levylawtax.com, gsmith@levylawtax.com, eservice@levylawtax.com; John Dent, Esquire, Jennifer A. McClain,

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CERTIFICATE OF COMPLIANCE

I hereby certify that the Department's Answer Brief complies with the font requirements of Florida Rules of Appellate Procedure 9.045(b) and 9.210(a)(2)(B), in that this Brief uses Arial 14-point font.

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