

IN THE SUPREME COURT  
STATE OF FLORIDA

DELTA PROPERTY MANAGEMENT,  
INC.

Petitioner,

Case No. SC02-2721  
1DCA Case No. 01-3181

vs.

PROFILE INVESTMENTS, INC.,

Respondent.

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RESPONDENT'S BRIEF ON JURISDICTION

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**Rules**

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## STATEMENT OF THE CASE AND FACTS

According to the district court below (Appendix )<sup>1</sup>, the corporate Petitioner failed to pay its ad valorem taxes and cure the delinquency for two years thereafter. The tax collector, as required by §197.502(4), Fla. Stat., prepared a statement listing the Petitioner as a party entitled to notice of a tax deed sale at the address as it appeared on the then most recent assessment roll. This statement was forwarded to the clerk of the circuit court, who prepared the notice of tax sale utilizing this information. Petitioner was no longer at that address and the notice was therefore returned to the clerk as undeliverable.

The Respondent was the successful purchaser at the tax deed sale. The first district below held that “the circuit court satisfied the statutory requirements in providing notice of the tax sale,” and affirmed the summary judgment entered in favor of the Respondent. (A. at 2).

Predictably, Petitioner alleged on appeal that the clerk failed to provide proper notice of the tax sale. The dispositive legal question was whether the clerk complied with the notice requirements of §197.522(1), Fla.

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<sup>1</sup> By Order dated March 28, 2003, this Court held that the Respondent’s Motion to Strike the Petitioner’s Jurisdictional Brief would be considered at the time of the jurisdictional determination. The Petitioner’s Jurisdictional Brief violates this Court’s decision in Reaves v. State, 485 So.2d 829 (Fla. 1986), and Rule 9.120(d), Fla. R. App. P., as it constitutes nothing more than an argument on the “merits” and the “facts” recited are not contained in the district court’s opinion.

Stat., “when he relied exclusively upon the tax collector’s statement in preparing the notice of the tax sale.” The trial court and the district court both held that the clerk was not required to look beyond the tax collector’s statement (A. at 2-3), and upheld the validity of the tax deed.

As the district court recognized, the crucial issue is whether the clerk followed the proper procedure and not whether notice was actually received, citing Dawson v. Saada, 608 So.2d 806 (Fla. 1992) (Id. at 3-4).

The district court’s ultimate holding was that the “clerk had no duty to look beyond the tax collector’s statement in preparing the notice of tax sale” (Id. at 5), reasoning that with the 1985 statutory amendments, the clerk can rely exclusively upon the information contained in the tax collector’s statement. “Because this is precisely what the clerk did in the present case, he fully satisfied his responsibilities.” (Id. at 6)

The Petitioner’s jurisdictional claims here are based upon an alleged decisional conflict and that the decision below directly affects two classes of constitutional officers, tax collectors and clerks of court. Neither of these contentions can withstand scrutiny and will be addressed serially herein.

## SUMMARY OF ARGUMENT

The district court's decision is in complete conformity with the statutory process, and explicitly follows this Court's decision in Dawson v. Saada. Further, the Petitioner's claim on appeal that the clerk was authorized to ignore the tax collector's statement in determining where and to whom notice of the tax deed sale was to be mailed, is directly contrary to every case decided since the 1985 amendments. The decision of the district court here, and all other district courts who have addressed this issue, uniformly hold that the clerk must provided notice in strict accordance with the information supplied by the tax collector.

The decision of the district court, while involving the tax collector and circuit court clerk, simply involves the application of well- settled statutory and decisional law to the particular facts of this case. Viewing the district court's decision within this context conclusively demonstrates that there is no new law announced, and no variation in the duties and performance thereof by either of these office holders suggested by the district court.

Accordingly, the Petition for Review should be denied.

## ARGUMENT

### I. There is No Decisional Conflict.

The basis for the district court's holding is clear: the circuit court clerk is authorized to mail a notice of a tax deed sale only to those persons at the addresses provided by the tax collector. This holding is in absolute conformity with every decision from this Court and the various district courts of appeal who have addressed this issue.

The district court's holding that the clerk must rely only on the information provided by the tax collector is in complete conformity with Eurofund Forty-Six Limited v. Terry, 755 So.2d 835 (Fla. 5<sup>th</sup> DCA 2000), wherein the Fifth District noted that the clerk had sent notice of the sale required by §197.502(4)(a) in reliance on the tax collector's statement, and rejected the identical claim asserted by the Petitioner herein: "The fact that some time in 1997 a change of address form had been filed with the property appraiser did not require the collector or the clerk to deviate from the statutory mandate." Id. at 835. The Fifth District in Eurofund, like the First District below, held that the clerk had no duty to determine the accuracy of the tax collector's information.

Both courts relied upon Dawson v. Saada, 608 So.2d 806 (Fla. 1991), wherein this Court held, id. at 808, n. 1, whether an owner receives actual



notice is irrelevant: the only relevant issue is whether the clerk complied with the notice provisions. This Court recognized that the “plain language” of the statute specifies the mandatory duties of the clerk upon an application for a tax deed, “namely that the clerk must notify by mail the persons listed in the tax collector’s statement.” The lack of conflict is manifest given this Court’s ultimate holding that once the clerk follows the mandatory statutory notice provisions by mailing a copy of the sale notice to those persons at the addresses contained on the tax collector’s statement, regardless of whether the information on that statement is correct, the statutory notice requirements have been met and the tax deed is valid Id. at 809.

Alwani v. Slocum, 540 So.2d 908 (Fla. 2<sup>nd</sup> DCA 1989), involves the identical claim made by this Petitioner: a tax deed was invalid because the tax collector had been notified of an address change but failed to include this in the statement supplied to the clerk. The Second District also rejected this argument and held that the clerk’s reliance on the tax collector’s statement, regardless of its accuracy, constituted strict compliance with the statute and provided no grounds for invalidating the tax deed. See also Mullen v. Polk County, 76 So.2d 282, 284 (Fla. 1954)( the clerk is not authorized to make an independent examination of the information provided by the tax collector;

if the clerk was to do so, “his actions might well be challenged because of disregard of the law.”)

Dispositively, the district court’s decision below follows the controlling principle announced by this Court in Dawson v. Saada and applied by all other district court’s who have addressed this issue.

Accordingly, there is no decisional conflict upon which jurisdiction in this Court could be based.

**II. The Decision Below Does Not Affect a Class of Constitutional Officers and This Court Should Decline to Exercise Jurisdiction.**

The Petitioner's claim that the decision below affects a class of constitutional officers (tax collectors and clerks of circuit court) is premised on the assertion that the district court's decision violates due process, a claim contrary to all of the existing law in this state concerning the process that is due in the issuance of a tax deed: Section 197.332, Fla. Stat. specifies that property owners shall be held to know that the taxes are due and payable annually and are charged with the duty of ascertaining and paying the amount of current or delinquent taxes. The Petitioner's due process claim stands this basic fact of citizenship on its head.

According to this Court in Spradley v. State, 293 So.2d 697 (Fla. 1974), "a decision which 'affects a class of constitutional or state officers' [for jurisdictional purposes] must be one that does more than simply modify or construe or add to the case law which comprises much of the substantive and procedural law of this state." Id. at 701. The district court's decision *sub judice*, while involving the tax collector and clerk, simply adds to existing case law. No new rules of law are announced, no previously

unaddressed duty or obligation or responsibility of either the tax collector or the clerk of circuit court is discussed or even suggested.

Even ignoring this fatal jurisdictional infirmity, the consistency of the decision below with the existing law mandates declining jurisdiction. Petitioner's due process argument ignores the fundamental requirement that it is the landowner who bears the burden of paying their taxes and curing any delinquencies. The law is unequivocal: due process is satisfied "as long as the clerk complies with the notice requirements." Dawson v. Saada, 608 So.2d at 809. See also Stubbs v. Cummings, 336 So.2d 412 (Fla. 1<sup>st</sup> DCA 1976) (tax deed sale where owner was mentally incompetent did not violate due process when statute complied with); Alwani v. Slocum, (the process which is due is for the legislature to decide)

At bottom, a corporate citizen like this Petitioner whose business is the ownership of commercial real property is clearly aware, both in fact and as a matter of law, that it must pay its taxes and must inquire if a tax bill is not received. The law is uncompromising on this point: the statutory notice requirements have been met, and due process has been afforded, when the clerk relies upon the information supplied it by the tax collector.

Accordingly, jurisdiction on this basis should also be rejected and the Petition for Review denied.



## CONCLUSION

The district court's decision is in conformity with all decisions of this Court and the other district courts on this issue: the clerk of the circuit court is authorized to rely only on the information provided by the tax collector when providing notice of a tax sale. The clerk here properly relied upon the information supplied by the tax collector. Accordingly, there is no conflict between that decision and this Court's decision in Dawson v. Saada or with the decision of any other district court on this issue.

The decision below does not affect a class of constitutional officers; it is simply the application of settled principles to the facts and merely adds to the existing body of case law. The district court's decision is in complete conformity with all other decisions dealing with this issue. Because the clerk strictly followed the statutory procedures, the Petitioner was afforded all the process it was due.

Accordingly, jurisdiction should be denied.

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the foregoing has been furnished by facsimile and U.S. mail, postage prepaid, to John R. Beranek, Esquire, Ausley & McMullen, 227 S. Calhoun Street, Tallahassee, Florida 32302-0391; and John R. Hargrove, Esquire, Heinrich Gordon Hargrove Weihe & James, P.A., Broward Financial Center, 500 E. Broward Blvd., Suite 1000, Fort Lauderdale, Florida, 33394 this \_\_\_\_ day of April, 2003.

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Attorney

**CERTIFICATE OF TYPE FACE**

I hereby certify that I have complied with Rule 9.210(a), Fla.R.App.P., and the font size of this brief is Times New Roman 14-point.

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Attorney



