IN THE
SUPREME COURT OF FLORIDA

JAMES A. ZINGALE, as the Executive Director of the Department of Revenue, State of Florida,	)	
Petitioner,	)	
vs.	)	**Case No. SC03-1270**
	)	**LT No. 4D02-3754**
ROBERT O. POWELL and ANN S. POWELL,	)	
Respondents.	)	

INITIAL BRIEF OF PETITIONER, JAMES A. ZINGALE

On Petition For Review Of A Decision Of The District Court Of Appeal, Fourth District, State of Florida

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STATEMENT OF THE CASE AND FACTS

In 1992 the electorate of Florida approved the "Save Our Homes" amendment, article VII, section 4(c)(1)-(7), Florida Constitution. The purpose of the amendment is to limit the assessed value of homestead property in the face of rising property values and increasing opportunity for development, and thus to further support the public policy of the state favoring preservation of homesteads.

A. Nature of the Case

Petitioner appeals a decision of the Fourth District Court of Appeal holding that property owners may claim the benefit of the assessment limitation of article VII, section 4, Florida Constitution, notwithstanding the property owners' failure to timely establish their right to a homestead exemption pursuant to article VII, section 6, and the relevant provisions of chapter 196, Florida Statutes.

Article VII, section 4, Florida Constitution, provides in pertinent part:

> (c) All persons entitled to a homestead exemption under Section 6 of this Article shall have their homestead assessed at just value as of January 1 of the year following the effective date of this amendment. This assessment shall change only as provided herein. (e.s.)

* * * *

> (c)(4) New homestead property shall be assessed at just value as of January 1st of the year following the establishment of the homestead. That assessment shall only change as provided herein. (e.s.)

Article VII, section 6(a), Florida Constitution, provides in pertinent part:

> Section 6. Homestead exemptions. -
>
> (a) 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 upon the owner, shall be exempt from taxation thereon, except assessments for special benefits, up to the assessed valuation of five thousand dollars, upon establishment of right thereto in the manner prescribed by law. (e.s.)

Chapter 196, Florida Statutes, prescribes the law governing establishment of the right to an exemption. Its provisions require that any qualifying person who wants to claim the homestead exemption must file an application with the county property appraiser. Section 196.011(1)(a), Florida Statutes, states:

> Every person . . . who, on January 1, has the legal title to real . . . property . . . which is entitled by law to exemption from taxation as a result of its ownership and use shall, on or before March 1 of each year, file an application for exemption with the county property appraiser, listing and describing the property for which exemption is claimed and certifying its ownership and use. . . . Failure to make application, when required, on or before March 1 of any year shall constitute a waiver of the exemption privilege for that

> year, except as provided in subsection (7) or subsection (8). (e.s)

Subsections (7) and (8) of section 196.011 allow the county Value Adjustment Board to excuse a homeowner's failure to comply with the March 1 filing requirement in certain narrow circumstances.

B. The Facts

Robert and Ann Powell, plaintiffs, purchased a home in Broward County in 1990. R 2, ¶ 6. The assessed value of their property in 2000 was $2,308,270, and in 2001 it rose to $3,890,990. R 7 (Exh. B). After receiving notice that their ad valorem taxes would increase by more than $10,000 for the year 2001, the Powells, on September 17, 2001, filed their first-ever application for homestead exemption. R 2-3; R 7 (Exh. B). The homestead exemption was subsequently approved for the year 2001. R 3, ¶ 14. The Powells attributed their failure to apply earlier to "inadvertence and oversight." R 2, ¶ 9.

After unsuccessful proceedings before the Broward County Value Adjustment Board, the Powells sued William Markham, the Broward County Property Appraiser, Judith M. Fink, Director, Broward County Revenue Collection Division, and James A. Zingale, Executive Director, Florida Department of Revenue. R 1-3. Notwithstanding the fact that the Powells had no homestead exemption for the year 2000, the complaint asserted that any increase over the 2000

assessment in excess of 3 percent was contrary to article VII, section 4. R 4, ¶¶ 24-28. The Powells sought a refund of the portion of their taxes in excess of what would have been imposed had the homestead exemption applied to their property in 2000 and thus been subject to the Save Our Homes limitation of article VII, section 4.[1] R 5.

The defendants answered and asserted several defenses:

1. Lack of Jurisdiction Over the Subject Matter - defendants contended the action in reality sought a homestead exemption for the year 2000, which the Powells had not timely applied for. Section 194.171(2), Florida Statutes, requires that actions to contest assessments be filed within 60 days of certification of the tax rolls for collection under section 193.122(2), Florida Statutes. The 2000 tax rolls were certified on October 24, 2000, and this action was not filed until July 3, 2002, well past the 60 day filing period. R 15.

2. Failure to State a Cause of Action - the Powells had admittedly not established their right to a homestead exemption by filing an application for the exemption with the property

[1]The complaint also complained of certain actions of the Broward County Value Adjustment Board but did not name the Board as a party. R 2, ¶¶ 12-22. Defendants moved to dismiss for failure to join an indispensable party. R 15, 18. The trial court ruled this motion moot when it entered judgment on the pleadings in favor of the defendants. R 59.

appraiser's office, as required by section 196.011(1)(a), Florida Statutes. R 16.

3. Waiver - the Powells' failure to timely apply for the homestead exemption for the year 2000 constituted a waiver of the exemption for that year, as provided in section 196.011(1)(a), Florida Statutes. R 17.

4. Statutory Bar to Relief - section 193.155 provides that homestead property is not entitled to the Save Our Homes limitation until 1995 "or the year following the year the property receives homestead exemption, whichever is later." R 3-4. The Powells did not challenge the validity of section 193.155 in the complaint.

C. Disposition in the Courts Below

The trial court had no trouble disposing of the Powells' claim, rendering final judgment on the pleadings in favor of defendants. R 56. The court cited Horne v. Markham, 288 So. 2d 196 (Fla. 1973), for the proposition that establishment of the right to homestead exemption requires that a timely application be made to the property appraiser. The trial court held that the Powells did not file a timely application for homestead exemption for the year 2000, and therefore their "entitlement" to the 3 percent cap on assessment increases did not begin until 2002, one year after they were found qualified for an exemption for the year 2001. The court ruled that section 193.155 barred their claim, and

found that statute consistent with Horne v. Markham. As noted, the Powells' complaint did not challenge section 193.155.

On appeal, the Fourth District Court of Appeal reversed. Not mentioning section 193.155, and construing only one word of article VII, section 4, the Fourth District held that the Powells were "entitled" to the benefits of article VII, section 4 even though they had not sought a homestead exemption for the year 2000:

> [T]he resolution of this case depends on the meaning of the word "entitled" as used in the Save Our Homes provision.
>
> * * *
>
> [W]e conclude that entitlement to a homestead exemption, for the purpose of seeking application of the Save Our Homes cap, is not limited to homeowners that have actually applied for and been granted homestead exemption, but includes all homeowners who qualify for and thus are entitled to homestead exemption.
>
> We reject Defendants' argument that Horne v. Markham, 288 So. 2d 196 (Fla. 1973), is controlling here. As set forth in Horne, a property owner seeking a homestead exemption must comply with requirements "prescribed by law," such as filing a timely application. 288 So. 2d at 200. That is not the issue before this court. The Powells do not seek a homestead exemption for the year 2000; they seek application of the Save Our Homes cap to the increase in the assessed value of their

> home in that year. Thus, their compliance with the filing requirements of section 196.011 is irrelevant here. See § 196.011, Fla. Stat. (2002).

App. 1-2.

SUMMARY OF THE ARGUMENT

ISSUE I - The decision of the Fourth District completely ignores the express reference in article VII, section 4(c) to article VII, section 6. Sections 4(c) and 6 must be read in pari materia. Under section 6, entitlement to a homestead exemption can be established only "in the manner prescribed by law." When these sections are read in pari materia, it is clear there can be no entitlement to the exemption absent the timely filing of an application pursuant to section 196.011(1)(a), Florida Statutes. Horne v. Markham, 288 So. 2d 196 (Fla. 1973). The Powells did not file an application for homestead exemption for 2000 and therefore are not entitled to it for that year.

Section 193.155, Florida Statutes, also bars the Powells' claim. That statute reflects the legislature's interpretation of article VII, section 4(c). It directs that the assessment limitation shall be applied to homestead property only after the property receives homestead exemption. Because the Powells did not apply for and receive the exemption until 2001, the assessment limitation does not apply until 2002. As a permissible legislative

interpretation of section 4(c), section 193.155 bars this action.

The Powells' interpretation of article VII, section 4(c) also reflects extraordinarily poor policy. It seeks only to excuse carelessness on their part and to substitute litigation for an orderly application process.

ISSUE II - The Powells brought this suit under authority of section 194.171(2), Florida Statutes, as, ostensibly, a challenge to the 2001 assessment. Section 194.171(2) is a jurisdictional statute of nonclaim. Because the Powells seek to establish their entitlement to a homestead exemption for the year 2000 to make that the base year for applying the assessment limitation, and because the homestead exemption is an integral part of the tax assessment in any given year, they should have challenged the 2000 assessment. Nikolits v. Ballinger, 736 So. 2d 1253 (Fla. 4th DCA 1999). They did not, and therefore this action is untimely and barred.

STANDARD OF REVIEW

Issues I and II present straightforward questions of law. The standard of review is de novo. Execu-Tech Bus. Sys. v. New Oji Paper Co., 752 So. 2d 582 (Fla. 2000); Armstrong v. Harris, 773 So. 2d 7 (Fla. 2000). No deference is owed the Fourth District's decision.

ARGUMENT

I. THE FOURTH DISTRICT ERRED IN HOLDING THAT ANY HOMEOWNER WHO MAY QUALIFY FOR A HOMESTEAD EXEMPTION IS ENTITLED TO THE BENEFIT OF THE SAVE OUR HOMES CAP WHEN THE HOMEOWNER HAS NOT APPLIED FOR AND BEEN GRANTED A HOMESTEAD EXEMPTION.

The decision of the Fourth District is wrong. There can be no "entitlement" to the benefit of the Save Our Homes cap in the absence of compliance with article VII, section 6 and its implementing statutes. The decision below disregards controlling constitutional language, statutes, and case law, as well as sound policy.

A. Article VII, Section 4(c) Creates No Free-Standing "Entitlement" To The Cap On Assessments.

The Fourth District's construction of the word "entitled" in article VII, section 4(c) finds no support in the constitutional language. In fact, the court simply construed one word of section 4(c)--"entitled"--and ignored other restrictive language. A plain reading of section 4(c) discloses that it creates no entitlement to the cap. Rather, it bestows its benefits only upon "persons entitled to a homestead exemption under Section 6 of this Article. . . ." The "entitlement" to the exemption under section 6 is limited. A qualifying homeowner is "entitled" to the homestead exemption only "upon establishment of the right thereto in the manner prescribed by law." Art. VII, § 6, Fla. Const. Because the

Powells were not entitled to the exemption for the year 2000, having waived that claim under section 196.011(1)(a), Florida Statutes, they were not entitled to the benefit of the cap for the year 2001.

This Court has previously construed article VII, section 6, in Horne v. Markham, 288 So. 2d 196 (Fla. 1973). It held that section 6 establishes no absolute right to a homestead exemption and that any person who fails to follow the "constitutional requirement" to apply for and establish the right "in the manner prescribed by law" cannot be heard to complain of being denied the "dependent right" of that provision. Id. at 199. Clearly, the Powells could not by any legal action have compelled the property appraiser to grant them a homestead exemption for the year 2000 without having filed an application pursuant to section 196.011(1)(a); hence, they simply were not "entitled" to the exemption for that year. The trial court correctly understood that Horne v. Markham meant the Powells, in the words of the amendment, were not "entitled to a homestead exemption under section 6" absent compliance with section 196.011(1)(a). The Fourth District did not.[2]

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[2]The reason the constitution (as implemented by chapter 196, Florida Statutes) requires an application process is not difficult to fathom. It provides an orderly framework for a property appraiser to receive timely applications, investigate the applicant's representations, and grant the exemption only to those who qualify. It also provides an orderly and expeditious appeals

The Fourth District's decision to focus only on the word "entitled" violates basic principles of constitutional construction. First, related provisions of the constitution must be construed in pari materia. As this Court held in Burnsed v. Seaboard Coastline R. Co., 290 So. 2d 13, 16 (Fla. 1974):

> Construction of the constitution is favored which gives effect to every clause and every part thereof. Unless a different interest is clearly manifested, constitutional provisions are to be interpreted in reference to each other, that is in pari materia, since every provision was inserted with a definite purpose.

This principle carries all the more force when one constitutional provision references another. Here, article VII, section 4(c) explicitly refers to section 6. The Fourth District's failure to even mention section 6 suggests it could not logically reconcile its expansive construction of the word "entitled" with the restrictive language of section 6. Only by ignoring that section could the Fourth District dismiss the statutory requirement of section 196.011(1)(a) as "irrelevant." But that statute cannot be analytically irrelevant because its mandate lies in section 6(a).

Second, courts have no license to disregard the plain language

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process for those denied the exemption. See, e.g., §§ 196.111, 196.121, 196.131, 196.141, 196.151, 196.161, 196.194, Fla. Stat.

of constitutional provisions. City of St. Petersburg v. Briley, Wild & Associates, Inc., 239 So. 2d 817, 822 (Fla. 1970) ("If the language is clear and not entirely unreasonable or illogical in its operation we have no power to go outside the bounds of the constitutional provision in search of excuses to give a different meaning to words used therein."). There is nothing ambiguous about the "entitled" language and therefore nothing to justify the expansive interpretation given that language by the Fourth District. To the contrary, the word "entitled" is anchored in and bounded by the language of section 6. The Fourth District's assertion that it was simply divining the intent of the framers of the amendment violates this fundamental principle of construction. It is supported neither by the plain language the framers used nor by reference to any history of which the court took note.

The Powells argued below that because article VII, section 4(c) does not define the word "entitled," resort may be had to sections 196.031 and 196.011(1)(a), Florida Statutes, for guidance. Section 196.031, the Powells contend, recognizes an entitlement to a homestead exemption because its use of that word is not connected to an application requirement, while section 196.011(1)(a), they say, simply perpetuates the distinction between those "entitled" to the exemption and those who apply for the exemption. This argument fails under basic principles of statutory construction.

Sections 196.031 and 196.011(1)(a), as related statutes, must be construed in pari materia. Because they are related, it is the Court's duty to read them harmoniously and avoid a construction that places them in conflict. City of Boca Raton v. Gidman, 440 So. 2d 1277 (Fla. 1983). Section 196.031 provides that property owners may be entitled to the homestead exemption up to various assessed values. That is all. The fact that section 196.031 does not refer to the application requirement is not relevant here because section 196.011 clearly does. There is no reason why section 196.031 should repeat the requirement.

Construed harmoniously, section 196.031 cannot be said to recognize an "entitlement" to a homestead exemption in the absence of an application therefor when 196.011(1)(a) plainly requires an application. Moreover, Horne v. Markham long ago disposed of the contention that there can be any distinction between those who apply for the exemption and those who are "entitled" to it. No application means no entitlement.

The Powells simply have no claim based on the language of article VII, section 4(c), when that section is read in pari materia with section 6. Because they were not among those "persons entitled to a homestead exemption under section 6 of this Article" for the year 2000, their claim fails. The decision below should therefore be reversed and the judgment of the trial court affirmed.

B. The Powells' Claim Is Barred by Article VII, Section 4(c)(4), and Section 193.155, Florida Statutes.

The provisions of article VII, section 4 must also be implemented by general law. The introductory paragraph of Article VII, section 4 provides as follows:

> **SECTION 4. Taxation; assessments. -**
>
> By general law regulations shall be prescribed which shall secure a just valuation of all property for ad valorem taxation,. . . .

Subsection (c) applies to homestead property and provides for the cap on assessments. Subsection (c)(4) provides:

> (c)(4) New homestead property shall be assessed at just value as of January 1 of the year following the establishment of the homestead. That assessment shall only change as provided herein.

The Fourth District's construction of the Save Our Homes amendment not only ignores, but contradicts, the language of 4(c)(4) and implementing general law, section 193.155, Florida Statutes.

As the section 4(c) makes clear, persons entitled to the homestead exemption at the time the amendment became effective were to have their homestead assessed at "just value" as of January 1 of the following year. Thereafter, assessments were capped according to the criteria of section 4(c)(1)a. and b. Those persons who had not established their entitlement to the exemption or who acquired homestead property after the effective date of the amendment are

subject to section 4(c)(4). Their property is not assessed for just value and made subject to the assessment limitation until the year after they qualify for the homestead exemption.

Section 193.155, enacted in 1994, makes this explicit:

> Homestead property shall be assessed at just value as of January 1, 1994. Property receiving the homestead exemption after January 1, 1994, shall be assessed at just value as of January 1 of the year in which the property receives the exemption. Thereafter, determination of the assessed value of the property is subject to the following provisions:
>
> (1) Beginning in 1995, or the year following the year the property receives homestead exemption, whichever is later, the property shall be reassessed annually on January 1. Any change resulting from such assessment shall not exceed the lower of the following:
>
> (a) Three percent of the assessed value for the prior year, or
>
> (b) The percentage change in the Consumer Price Index . . . for the preceding calendar year . . . . (e.s.)

The Powells' complaint did not challenge the constitutionality of section 193.155. They expressly acknowledged that in their brief to the Fourth District, although in response to the defendants' reliance on the statute they maintained defendants' "interpretation" was unconstitutional because it conflicts with

their interpretation of article VII, section 4(c).[3]

There can be no issue here as to the meaning of section 193.155. That statute is unambiguous. It could not more clearly state that the limitation applies only to the assessment of property that has received the homestead exemption. It is not the defendants' "interpretation" of the statute with which the Powells belatedly took issue, but its plain wording. Not having challenged the statute in the trial court, however, the Powells should not be permitted to do so on appeal.

Even if a challenge to the constitutionality of section 193.155 were properly before the Court, the Powells' argument would surely fail. Article VII, section 4 requires implementing laws, and section 193.155 reflects the legislature's interpretation of section 4(c). Not only is the legislature's construction of the meaning and intention of a constitutional provision to be followed unless manifestly erroneous, it is controlling if the constitutional provision is susceptible of two constructions. Agency for Health Care Admin. v. Associated Industries, 678 So. 2d 1239, 1247 (Fla. 1996), and Greater Loretta Imp. Ass'n v. State, ex rel. Boone, 234 So. 2d 665 (Fla. 1970). See also Brown v. Firestone, 382 So. 2d 654, 671 (Fla. 1980) (legislature's

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[3]See Reply Brief, pp. 2 & 5, filed in the Fourth District Court of Appeal.

relatively contemporaneous construction is strongly presumed to be correct). Thus, while the Powells may, at best, offer an alternative reading of section 4(c), their arguments utterly fail to demonstrate that the legislature's interpretation is manifestly erroneous.

The Broward County Property Appraiser did exactly what the statute requires. He assessed the Powells' property at its "just value" for both 2000 and 2001. Because the Powells applied for and received a homestead exemption for 2001, their property began to enjoy the protection of the assessment limitation in 2002. The property appraiser did not err in his application of section 193.155. Hence, for this reason too, the decision of the Fourth District should be reversed.

C. The Decision of The Fourth District Is Contrary To Sound Policy.

The interpretation of article VII, section 4(c) offered by the Powells and adopted by the Fourth District is unreasonable, inefficient, wasteful and ultimately unworkable. This Court has made clear that interpretations of constitutional provisions that lead to such results "will not be adopted when the provision is fairly subject to another construction which will accomplish the manifest intent and purpose of the people." Plante v. Smathers, 372 So. 2d 933, 936 (Fla. 1979).

In his jurisdictional brief to this Court petitioner pointed out that property appraisers could not possibly identify those homeowners who had not applied for but might be entitled to the homestead exemption, much less determine their entitlement to it for purposes of applying the assessment cap. Petitioner's Jurisdictional Brief at 7,9. Acknowledging the validity of that point, the Powells replied that property appraisers need not determine such "entitlements." Rather, neglectful property owners could file suit and challenge the assessment under section 194.171(2), Florida Statutes. The Powells contended that

> [t]he burden remains on taxpayers to come forward and challenge the assessment of their property within 60 days from the date the assessment they challenge is certified for collection by demonstrating they were entitled to the homestead exemption in the prior year.

Respondents' Jurisdictional Brief at 8-9. In other words, entitlement to the exemption and the assessment cap may be established by suing the property appraiser rather than through the orderly application process mandated by the constitution and section 196.011(1)(a).

The absurdity of substituting lawsuits for the application process alone warrants rejection of the Powells' and the Fourth District's interpretation of article VII, section 4(c). The alternative construction of sections 4(c) and 6 that will

accomplish the purpose of the amendment is simplicity itself: requiring the timely filing of an application for the exemption.

But there are also other untoward consequences in addition to wasteful litigation. For example, if the suit filed pursuant to section 194.171(2) simply results in determination of entitlement to the assessment cap without regard for compliance with section 196.011(1)(a), how is the property appraiser to know when that entitlement ends? Normally, homeowners are required to file an application for the exemption annually or, if that requirement has been waived by the county, to notify the property appraiser when their homestead eligibility ceases. § 196.011(1)(a) and (9)(a), Fla. Stat. But the duty to notify the property appraiser applies only to the owner of property granted an exemption by the property appraiser. § 196.011(9)(a), Fla. Stat.

The logic of the Powells' argument–-that section 196.011 is utterly irrelevant--leads to an absurd result: if the homeowner never applies for a homestead exemption but succeeds in an action under section 194.171(2) to limit the assessment, the homeowner has no obligation to later inform the property appraiser of any change in homestead status since he has been granted no exemption by the property appraiser. Apparently, it is up to the property appraiser to divine when these privileged homeowners are no longer "entitled" to the exemption and the cap.

The Powells' interpretation of article VII, section 4(c) is manifestly unreasonable, and as policy it is execrable. They simply seek to excuse oversight, inadvertence, and even gross neglect, particularly on the part of those with the resources to file a lawsuit. But even if the Powells' interpretation were a permissible reading of section 4, their argument fails because the legislature's construction, manifest in section 193.155, is (at the least) equally permissible, and therefore controlling. Agency for Health Care Admin. v. Associated Industries, Inc., 678 So. 2d 1239; Greater Loretta Imp. Ass'n v. State ex rel. Boone, 234 So. 2d 665.

II. THE TRIAL COURT LACKS JURISDICTION OVER THIS ACTION BECAUSE IT IS UNTIMELY UNDER SECTION 194.171(2), FLORIDA STATUTES (2000).

Although the Fourth District stated that the Powells were not seeking a homestead exemption for the year 2000, the effect of that decision is to recognize the Powells' entitlement to the exemption for that year upon proof on remand. The Powells' attempt to establish their homestead entitlement under section 194.171(2) for the year 2000, however, is untimely.

Section 194.171(2), Florida Statutes (2000), states:

> (2) No action shall be brought to contest a tax assessment after 60 days from the date the assessment being contested is certified for collection under s. 193.122(2), or after 60 days from the date a decision is rendered concerning such assessment by the value adjustment board if a petition contesting the

> assessment had not received final action by the value adjustment board prior to extension of the roll under s. 197.323.

Section 194.171(6), Florida Statutes (2000), states that the requirements of subsection (2) are "jurisdictional." The 60-day filing requirement of section 194.171(2) "has been strictly enforced as a jurisdictional statute of nonclaim, even where the authority to assess is challenged on constitutional grounds or the assessment is attacked as void and not merely voidable." Nikolits v. Ballinger, 736 So. 2d 1253, 1254 (Fla. 4th DCA 1999). See also Markham v. Neptune Hollywood Beach Club, 527 So. 2d 814 (Fla. 1988)(section 197.141(2) is jurisdictional statute of nonclaim).

The Powells seek to limit the assessed value of their homestead for the year 2001 based on their purported "entitlement" to a homestead exemption for the year 2000. The Fourth District's decision in Nikolits makes clear that the Powells' claim is untimely, and hence barred, under section 194.171(2).

In Nikolits the property owner was denied a homestead exemption for the year 1996. Nevertheless, in December 1997 she sued the property appraiser under section 194.171(2) asserting that she was entitled to the Save Our Homes 3 percent cap for the year 1997 and that the property appraiser had improperly denied the exemption for the year 1996.

Analyzing the framework of the assessment process, the

Nikolits court ruled that the applicability of a homestead exemption was "an integral part of a 'tax assessment' within the meaning of section 194.171(2)," and therefore a timely challenge was necessary to satisfy the jurisdictional requirement of that section. See 736 So. 2d at 1255. Further, the court held that the property appraiser's disapproval of the homestead exemption was part of the 1996 tax assessment. Because the property owner did not timely challenge the 1996 assessment within 60 days of the certification of the tax roll on October 14, 1996, the circuit court lacked jurisdiction over the challenge to the 1997 assessment. Id. at 1254.

Based on the pleadings in this case, it is undisputed that the 2000 tax roll was certified on October 24, 2000, and this action not filed until July 3, 2002, well over sixty days after October 24, 2000. R 15-16, ¶ 3; R 28, ¶ 3.A and B. Although the Powells deny they have sought a homestead exemption for the year 2000, the fact is they have asserted that year as the base year for application of the Save Our Homes cap based on their claimed entitlement to a homestead exemption for that year. Applying the Nikolits holding, that purported homestead entitlement is an integral part of the tax assessment for the year 2000. The Powells therefore did not meet the requirement to file this section 194.171(2) action within 60 days after certification of the tax

roll in 2000.

For the same reason the Powells' action cannot be timely under the alternative language of section 194.171(2)--"or after 60 days from the date a decision is rendered concerning such assessment by the Value Adjustment Board if a petition contesting the assessment had not received final action by the value adjustment board prior to extension of the role under § 197.323." (Emphasis added.) The Value Adjustment Board was not asked to render a decision on the critical 2000 assessment. The Powells sought the Board's review of the 2001 assessment.

The Powells' claim that they are entitled to the 3 percent cap in the year 2001 is dependent upon their establishing entitlement to the homestead exemption for the year 2000, the asserted base year. Under the Nikolits decision their action is untimely, and the circuit court lacks jurisdiction to hear it.

CONCLUSION

For all of the foregoing reasons, the decision of the Fourth District should be reversed, and the judgment of the trial court affirmed.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail this _____ day of December, 2003, to **HARRY S. RALEIGH, JR.,** Niles, Dobbins, Meeks, Raleigh & Dover, L.L.P., P. O. Box 11799, Fort Lauderdale, FL 33339-1799; and **GAYLORD A. WOOD, JR.**, 304 S.W. 12th Street, Fort Lauderdale, FL 33315-1521.

_____
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CERTIFICATE OF COMPLIANCE

I certify that this brief was prepared with Courier New 12-point in compliance with Fla. R. App. P. 9.210(a)(2).

_____
Louis F. Hubener

APPENDIX

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