

IN THE SUPREME COURT OF FLORIDA

CASE NO. SC03-520

SUNSET HARBOUR NORTH
CONDOMINIUM ASSOCIATION,
as Representative; et. al.,

Appellants,

v.

JOEL ROBBINS, Dade County
Property Appraiser,

Appellee.

Lower Tribunals:
Third District Court of Appeal,
Consolidated Case: 3D02-2316

Miami-Dade 11th Judicial Circuit,
Case: 97-28404 CA 30

**BRIEF OF AMICUS CURIAE
NATIONAL ASSOCIATION REAL ESTATE INVESTMENT
TRUSTS IN SUPPORT OF THE APPELLANTS**

On Appeal from the District Court of Appeal,
Third District, State of Florida

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STATEMENT OF INTEREST

The National Association of Real Estate Investment Trusts (“NAREIT”) represents real estate investment trust and other publicly traded real estate companies. It represents nearly 2,600 residential, commercial, and industrial properties in Florida, having a present assessed value well in excess of \$20 billion dollars.

At any given time, its properties, in Florida and elsewhere, are undergoing construction, major modifications and remodeling, or deconstruction. Thus, it has a substantial concern with the constitutionality of Section 192.042(1), Florida Statutes. If the statute were declared unconstitutional by this Court, at this point, this would result in great uncertainty in the investment community because of the unknown tax impact that might occur. The investment companies and trusts represented by NAREIT include individuals, for-profit corporations, charitable foundations, mutual funds, and pension funds (including the State of Florida). This uncertainty would be perilous for all investment properties held in Florida. During this period of uncertainty, investments in the state can be expected to be avoided.

This brief sets forth an argument to this Court to remand the case to the circuit court in order to establish a record. Only after the Dade County Property Appraiser has demonstrated how he plans to comply with the uniformity and equality requirements of the Florida Constitution set out in Article VII should this Court move to a determination on the constitutionality of the statute.

SUMMARY OF ARGUMENT

The Florida Constitution requires that all property be assessed at its just value, meaning all property is to be assessed at 100%. This requirement secures equity. The Constitution also requires uniformity of

rate to ensure that all properties are treated uniformly.

The Dade County Property Appraiser has not demonstrated that all real estate undergoing construction, major modification, or deconstruction will be assessed based upon its just value. He has chosen a select number of structures to assess even though they are not completed, as required by Section 192.042(1), Florida Statutes. There is no record to indicate that the property appraiser will be taxing all partially completed structures whether they are residential, commercial, or industrial; whether they are real or tangible personal property; whether they are temporarily non-habitable.

The Appellee property appraiser has not established a record to show how he will assess homestead property which is not habitable as of January 1st because it has sustained damage through some hazard. For example, all homes in Dade County which could not be occupied by their owners on January 1st, after Hurricane Andrew, would have to be assessed as partially completed structures if the statute is deemed to be unconstitutional.

Until such a record demonstrating a uniform and equitable application of valuation standards and procedures, and how uninhabitable homestead property is to be treated, this Court should not rule on the constitutionality of the statute. Instead, this Court should remand the matter to the circuit court to permit the establishment of such a record.

ARGUMENT

I.

THE CONSTITUTION REQUIRES EQUITY AND UNIFORMITY OF AD VALOREM TAX ASSESSMENTS

The Florida Constitution requires all property to be assessed at just value, Section 4(a), and at a uniform rate, Section 2 of Article VII. Just value, as discussed below, means at 100%. In this way, all property is assessed the same and equitably. The uniformity of rate requirement also disallows one property assessed at 50% of value, for example, while another property is assessed at 100% from both paying at a rate of – say – 10 mills. Effectively, the 50% property is at a rate of only 5 mills. This violates uniformity.

II.

THE DADE COUNTY PROPERTY APPRAISER HAS NOT DEMONSTRATED THAT HE WOULD ASSESS PARTIALLY COMPLETED IMPROVEMENTS TO REAL PROPERTY EQUITABLY AND UNIFORMLY

The Dade County Property Appraiser has chosen two structures as his test cases in challenging Section 192.042(1), Florida Statutes. The two structures are the one in this case, Sunset Harbor North Condominium, and the second is Miami Beach Ocean Resort, *Fuchs v. Robbins*, 818 So. 2d 460 (Fla. 2002). No other assessments for partially completed improvements have been reviewed by this Court nor by the District Court of Appeal for the Third District, nor, as far as we know, by the 11th Circuit Court of Dade County. In both instances, large commercial structures were assessed after they had been enclosed or “dried in.”

There is no record of how, or indeed whether, the Dade County Property Appraiser is assessing partially completed single family residences, land improvements to sites where building construction has not yet begun, or home improvements underway but not completed. The total absence of protests, much less

litigation taking him to task for disregarding Section 192.042 in any such cases strongly suggests he is not assessing them at all. In short, the entire record in this case relates only to this one development.

Therein lies the problem for the Court. There is absolutely no record as to how the Dade County assessor will achieve equity and uniformity – that all construction be assessed at just value as of January 1st of each (and every) year. This Court, in *Walter v. Schuler*, 176 So. 2d 81 (Fla. 1965), defined “just value” as being equivalent to the traditional definition of “fair market value;” that is, what a willing but not obligated buyer would pay a willing but not obligated seller (with all other matters between them being equal) for that particular property at that stated moment in time. The court also stated that just value was synonymous with “full” value and “100%” value.

Assume this Court recognizes that the January 1st lien date is a timing law but the substantially complete provision is not, and strikes down that portion of Section 192.042(1). It will then be confronted with an endless series of ad valorem tax challenges based upon the denial of equitable and uniform assessments of construction, elsewhere mandated by the Florida Constitution.

For example, property appraisers will surely be challenged if they target only large commercial structures once they are enclosed as appears to be the current practice of the Dade County appraiser. They surely will be challenged if there is (alleged) discrimination between classes of property, commercial and single family residential, for example, or if only real and not tangible personal property in so taxed. They will probably be challenged unless all construction, county-wide, can be documented exactly as it was on January 1st. (A few days in a construction schedule may have significant impact on value.) Many of these challenges may result in enormous inequities with blatant discrimination such that this Court will be impelled to hear the appeals.

III.

THIS MATTER SHOULD BE REMANDED TO THE CIRCUIT COURT TO COMPILE A SUFFICIENT RECORD TO SHOW HOW THE DADE COUNTY PROPERTY APPRAISER WILL

ASSESS CONSTRUCTION IF SECTION 192.042 IS
UNCONSTITUTIONAL

The “substantially complete” language was added to the Florida Statutes in 1961. The Dade County Property Appraiser, and all his predecessors for four decades, have complied with Section 192.042(1), at least for every property except the two that have been before the Court. The other 66 county property appraisers and all their predecessors back to 1961 have faithfully followed the statute, without exception. There is not a single serving property appraiser or tax assessor (as they were known at the time) who was in office in 1961. There is no institutional structure or methodology in place for the assessment of construction (as of January 1 each year).

In *Wal-Mart Stores Inc., v. Mazourek*, 831 So. 2d 835 (Fla. 2002), this Court relied upon what it understood to be standard appraisal practices and procedures when it required the sales tax to be added in valuing tangible personal property. But here there is no record to indicate to this Court what appraisal practices and procedures may be in the valuation of real estate being improved. There is a total absence of any record to indicate to this Court, or to the *amicus curiae* and other interested parties, what will be wrought if this Court upholds the Third District.

Section 475.628, Florida Statutes, requires all real estate appraisers to comply with the Uniform Standards of Professional Appraisal Practice (“USPAP”) promulgated by the Appraisal Foundation.¹ The International Association of Assessing Officers (“IAAO”) of which all Florida property appraisers are members also mandates adherence to USPAP. There are Standards for the assessment of real property, tangible personal property, and for mass appraisals employed by tax assessors and others. There is none for partially completed improvements to real property. The standard texts promulgated by The Appraisal Foundation and by IAAO provide no guidance on the appraisal of partially completed real estate

¹ The Federal Institution Reform, Recovery and Enforcement Act of 1986 (“FIRREA”), 12 U.S.C. §1821(d) imposed upon the states the requirement that they comply with USPAP. IAAO is a member of the Appraisal Foundation.

improvements. As a consequence, neither this Court, nor the parties, nor taxpayers as the general population can have any firm fore-knowledge as to how a requirement by this Court to assign some value (either positive, neutral, or negative) to all property undergoing either construction or deconstruction, can meet the requirements of equitable and uniform assessment.

CONCLUSION

This case should be remanded with directions to the circuit court to require the Dade County Property Appraiser to submit his proposed tax roll showing his assessment of all real estate undergoing improvements and to demonstrate that such assessments represent just value and apply to all property undergoing improvements, hence meeting the constitutional requirement of equity and uniformity.

Respectfully submitted this 7th day of May, 2003.

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Certificate of Service

I HEREBY CERTIFY that a true and correct copy of this brief was provided by U.S. Mail, postage pre-paid on this 7th day of May, 2003, to:

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Certificate of Compliance

I further certify that this brief is presented in 14-point Times New Roman and complies with the front requirements of Rule 9.210.

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