IN THE SUPREME COURT OF FLORIDA

CASE NO. SC03-783

LEWIS Y. and BETTY T. WARD, et al,

Appellants,

v.

GREGORY S. BROWN, Property Appraiser of Santa Rosa County, et al,

Appellee.
_____/

Lower Tribunals:
First District Court of Appeal, Case No.: 1D02-3265

Santa Rosa County 1st Judicial Circuit, Case: 2001 CA 892

PETITIONERS' JURISDICTIONAL BRIEF
On Review From The First District Court of Appeal

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STATEMENT OF THE CASE AND FACTS

This is a declaratory action involving a challenge to the misclassification of Petitioners' intangible leasehold interests and is not an assessment challenge nor is it an action seeking an exemption.

The Petitioner brought a class action to challenge an error of omission or commission on the part of the property appraiser that resulted in the misclassification of the Petitioners' intangible leasehold interests as being real property. The misclassification resulted in the Petitioners' intangible leasehold interests being subject to county ad valorem taxes, as opposed to state intangible taxes. See *Ward et al v. Brown, et al.*, 28 Fla. L. Weekly D731. Appendix "A". The trial court determined that the members of the proposed class were time barred from bringing this challenge pursuant to Section 194.171(1), Florida Statutes, and struck the allegations relating to the class action. *Id* at D731-D732.

The District Court dismissed the Petitioners' reliance on the legislative classification under Sections 196.199(2)(b) and 199.023(1)(d), as "semantic arguments" and opined that the Petitioners were seeking an exemption and thus upheld the trial court. *Id* at D732. The Petitioners had not sought an exemption nor had they sought to challenge the judgment of the property appraiser in arriving at a valuation of the misclassified property. *Id* at D732.

A challenge to the classification of property is not subject to the 60-day period for filing required by Section 194.171(2). This has been the settled law in at least three other districts and is not contradicted by any other Florida appellate court. *Id* at D732-D733. Nonetheless, the First District parted ways with its sister courts (and with

its own precedent) and held that classification challenges were subject to the 60-day time period provided in Section 194.171(2). On this basis, the District Court determined that the action of the trial court in striking the class action allegations was warranted. *Id* at D732. It is from that decision that the Petitioners seek review in this Court based upon express and direct conflict.

SUMMARY OF ARGUMENT

In ruling that a classification challenge is subject to the 60-day rule, the District Court has created express and direct conflict with other district courts' decisions on the same issue of law. The Supreme Court has jurisdiction over this case because of the conflict with decisions from the Second, Fourth, and Fifth District Courts of Appeal. Those courts have all held, expressly, that challenges to the classification of property are not subject to the 60-day rule of Section 194.171(2). Only a contest to an individual tax assessment is subject to that 60-day rule. The *Ward* case challenged the improper classification of approximately 800 individual government leaseholds as real property rather than intangible personal property. The legislature and the Department of Revenue (Department) have classified government leaseholds as intangible personal property.

The Second District Court has recently issued an opinion that expressly and directly conflicts with *Ward*. The Second District's opinion recognizes the distinction between classification challenges and contests of individual assessments and joins with the Fourth and Fifth Districts in holding that the 60-day rule does not apply in classification challenges. The *Ward* decision dismisses the distinction as merely "semantic."

The Fifth District has held, in two separate decisions, there is a distinction between classification cases and assessment challenges, and specifically held that the 60-day rule of 194.171(2) does not apply in classification challenges. These decisions conflict with the *Ward* decision. The Fourth District, in yet another express and direct conflict with *Ward*, has recognized that the 60-day rule does not apply in cases dealing with misclassification.

This Court has jurisdiction and there are compelling policy reasons for it to hear the case. Taxpayers are entitled to clearly defined remedies. The *Ward* decision has created conflict and confusion and has cast doubt on even the availability of alternative statutory remedies.

ARGUMENT

The Court Has Jurisdiction To Review This Case

The decision of the district court expressly and directly conflicts with decisions from the Second, Fourth, and Fifth District Courts of Appeal on the same issue of law. This Court has jurisdiction to review the case pursuant to Article V, Section 3(b)(3), Florida Constitution and 9.030(a)(2)(A)(iv), Rules of Appellate Procedure. The decision of the district court is even at odds with one of its own earlier decisions.

The latest decision recognizing that the 60-day rule of Section 194.171(2), does not apply in cases of misclassification, is the recent decision of the Second District is *Department of Revenue and Tedder v. Pepperidge Farm, Inc.*, 28 Fla. L. Weekly D784 (19 March 2003), pending rehearing (on a different issue). Like the *Ward* case,

this case involved the misclassification of intangible personal property. Also like the *Ward* case, this was a class action for all taxpayers whose property had been misclassified. The Department and the Tax Collector (Tedder) moved to dismiss the complaint on the basis that it should have been brought within 60 days as required under 194.171(2). Pepperidge Farm, the class representative, was not challenging the assessment of its property, but instead was challenging the classification by the property appraiser of its property as tangible personal property, rather than as intangible personal property as it had been defined by the legislature. This action sought a refund within the 4-year period allowed under Section 197.182. (This case was provided to the *Ward* court, as supplemental authority, on rehearing.)

The Second District agreed that Pepperidge Farm's lawsuit did not challenge the property appraiser's assessment of the value of the subject property, but challenged the misclassification of the property as tangible personal property rather than intangible personal property. The Second District cited *Sartori v. Department of Revenue*, 714 So. 2d 1136 (5 DCA 1998).

The Fifth District was confronted with this same issue of law in *Florida Governmental Utility Authority v. Day*, 784 So.2d 494 (5 DCA 2001). In that case, the court recognized the difference between a challenge to a classification and a challenge to a tax assessment, holding:

> However, Florida courts recognize the difference between a claim involving a classification of property, and a claim challenging a tax assessment on property. [citing *Sartori*] A classification claim is not governed under section 194.171; a claim challenging a tax assessment is subject to the statute. [again citing *Sartori*] 784 So.2d 494, at 497.

The *Sartori* case involved the misclassification of pollution control equipment.

The property owner had paid his taxes, under protest, and then had sought a refund through the county tax collector. The Department denied permission to the tax collector to grant the refund, claiming the case had not been filed within the 60 days required under Section 194.171(2). The Fifth District held that the action challenged the classification of property, not the tax assessment, and therefore the action was not subject to the 60-day limitation of 194.171(2), citing *Department of Revenue v. Gerald Sohn*, 654 So. 2d 249 (1 DCA 1995).

In 1999, the Fourth District joined the other districts, on the same issue of law, in recognizing the difference between classification actions and assessment challenges. That case involved a refund on a tax certificate, issued on property which was misclassified condominium common element property. That district court, also citing *Sohn*, held that actions involving the classification of property are not subject to the 60-day rule of 194.171(2). *Bankunited Financial Corp. et al v. Markham, et al*, 763 So.2d 1072 (4 DCA 1999).

The *Sohn* case involved an investor in tax certificates who brought the action under Section 197.122(1). The Department had denied his claim stating he was barred under the 60-day rule of Section 194.171(2). The First District held that actions brought to reclassify property, misclassified by the property appraiser, are not subject to that 60-day limitation.

The *Ward* court did make some effort to distinguish *Sohn* and *Sartori*, but was unable to do so with *Florida Governmental Utilities*. The Ward court attempted to addresses the conflict by stating that, "the taxpayer's action [in *Fla. Gov't Util.*] may have been a result of actions by the government" which might distinguish the case on

its facts. *Id* at D732. Actually, the egregious actions by the government, the *Ward* decision references, was the subject of Judge Pleus's specially concurring opinion in *Fla. Gov't Util.*, 784 So.2d 494 at 499. However, the holding in *Fla. Gov't Util.* is quoted on page 5 of this Brief. No effort was made by the *Ward* court to explain the conflict with *Bankunited* nor the *Pepperidge Farm* decision.

The *Ward* opinion characterized both *Sartori* and *Sohn* as refund cases. Actually, *Sartori* was a refund case under Section 197.182, while *Sohn* was a suit to permit cancellation of a tax certificate under Section 197.122. The issue addressed by both courts was the Department's refusal to permit a repayment of the taxes because neither Messers Sartori nor Sohn had met the 60-day rule of Section 194.171(2). The *Ward* opinion also attempted to distinguish *Sartori* and *Sohn* on the basis that, in those cases, the property appraiser admitted his misclassification. That was not the situation in *Bankunited* where the property appraiser resisted the taxpayer; nor was that the case in *Florida Governmental Utilities*; nor was it in *Pepperidge Farm*.

The *Ward* court intentionally blurred the bright line created in the earlier opinions distinguishing "a challenge to classification" and "a contest to a tax assessment," and in doing so created an express and direct conflict with the other district courts.

Government leaseholds have been classified by the legislature as intangible property. §§196.199(2)(b) and 199.023(1)(d).[1] The Department, in its Rule 12D-8.008(2)(b)5., has designated "Leasehold interest (Governmental owned)" as a specific

[1] Between 1964 and 1980, government leaseholds were classified as real property, prior to 1964 government leaseholds were classified as incorporeal chattels.

class of property. See also, Section 195.073(1)(i). Further, this Court has recognized such classification in the case of *Capital City Country Club v. Tucker*, 613 So.2d 448, at 452 (Fla. 1993).

The Court Should Exercise Its Discretion To Review This Case

Not only does this Court have jurisdiction to review this case, but there are also strong policy reasons why it should exercise its discretion to do so. Prior to the First District's departure from its own *Sohn* case, Florida law was well settled that the 60-day rule set out in Section 194.171(2) does not apply when there is a question relating to the classification of property by local taxing officials, but applies only where there is a challenge to an individual assessment, or valuation. Now the law is unclear and in conflict.

If the *Ward* case is to stand, nearly 800 individuals will be forever barred from having their claim of illegal taxation heard. The remedies available to aggrieved property owners improperly taxed should not be a subject of inconsistency and confusion. Taxpayers' remedies should be clear and certain. The decision of the First District in *Ward* expressly and directly conflicts, not only with its own decision in *Sohn*, but with decisions from the Second, Fourth, and Fifth Districts.

The 60-day rule adopted by the legislature, as a jurisdictional nonclaim limitation in subsections (2) and (6) of 194.171, is intended to be applied under the narrow constraints specifically set out in that statute. The statute limits the 60-day rule to only those situations where there is a "contest to a tax assessment". This means a lawsuit challenging the assessment, or valuation, assigned by a property appraiser to an individual parcel of property.

The 60-day rule is a harsh rule severely limiting the due process rights of taxpayers. The public policy behind it is to insure that the prompt collection of annual property taxes not be subject to the prolonged uncertainty of the threat of late-filed litigation. Because it is so harsh and is so constricting of taxpayers' due process, the courts have recognized that it applies only where there is a challenge to individual tax assessments, and does not apply when there is (for example) a question of the classification of multiple pieces of property. Classification issues frequently arise later in the tax calendar, and do not threaten the timely and ordinary collection of taxes on individual parcels.

The legislature has provided specific remedies, in situations other than individual contests to specific tax assessments, by establishing different time limits under Sections 197.122 and 197.182. The opinion of the First District in *Ward* appears to close all doors of redress to tax burdened property owners, including those remedies created by the legislature in these two statutes. In short, the decision in *Ward* conflicts not only with decisional case law in the Second, Fourth, and Fifth Districts, and within the First District, but also creates confusion as to the intended legislative relationship between these three statutes. In fact, the very validity of Sections 197.122 and 197.182 is cast into doubt by the decision in *Ward*. This is an area of law that demands a resolution of the conflict created by the district court's decision in *Ward*.

CONCLUSION

Express and direct conflict exists and certainty is needed. The Court should grant jurisdiction and review this case.

Respectfully submitted this 20th day of May 2003.

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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 font requirements of Rule 9.210.

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