IN THE SUPREME COURT
STATE OF FLORIDA

CASE NO. SC03-783
First District Court of Appeal Case No. 1D02-3265

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

v.

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

BRIEF OF RESPONDENT GREGORY BROWN ON JURISDICTION

ON DISCRETIONARY REVIEW
FROM THE FIRST DISTRICT COURT OF APPEAL

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STATEMENT OF THE CASE AND FACTS

The Petitioners' Statement of the Case and Facts contains declarations of "fact" contradicted by the First District Court of Appeal's opinion. In reality, this case stems from the Property Appraiser's determination that the Petitioners own certain buildings and improvements located on land leased from Santa Rosa County under 99-year ground leases with options to renew for additional 99-year periods. Because the Petitioners have exclusive possession and control of these buildings and improvements, the Property Appraiser determined that the Petitioners legally and equitably own them.

The interlocutory appeal filed by the Petitioners involves their attempt to convert this action to a class action after the 60-day period of non-claim in section 194.171, Florida Statutes. Section 194.171 provides that there is no subject matter jurisdiction to hear challenges of assessments after 60 days from the time that the Property Appraiser certifies the tax roll. The Petitioners describe the issue on appeal as whether misclassifications of intangible leasehold interests are subject to the 60-day period of non-claim. This was not the issue addressed by the First District. Instead, the First District held that the Property Appraiser's determination that the Petitioners owned their improvements, and therefore did not qualify for the governmental exemption, was subject to the 60-day period of non-claim. On the face of the opinion, the First District held that the Petitioners were simply

"challenging the property appraiser's judgment to deny them an exemption under chapter 196, place their properties on the tax roll, and impose ad valorem taxes." *Ward, et al. v. Brown, et al.*, 28 Fla.L.Weekly D731, D732 (Fla. 1st DCA March 13, 2003). The First District also noted: "The instant case involves a deliberate conclusion reached by the property appraiser that the appellant's beach homes should be assessed as private property because the improvements will not vest in the county until the termination of the 99-year lease." *Id.* at D732.

The Petitioners seek to mischaracterize the issue as one involving technical misclassifications and intangible leasehold interests, even though the Property Appraiser simply determined that the Petitioners own the buildings at issue and therefore placed them on the tax roll. There is no technical classification issue because buildings indisputably constitute real property. The threshold issue for the Property Appraiser was to identify the owner of the real property at issue. Once the owners were determined to be private parties, i.e., the Petitioners, who used the real property for residential and commercial purposes, the properties were subject to assessment. There was no need to reach any classification issues once the properties were determined to be privately owned and used.

Because the Property Appraiser determined that the Petitioners, not the County, were the true owners of the buildings, he denied the Petitioners' claims that they were exempt under the governmental exemption in section 196.199, Florida Statutes. In doing so, the Property Appraiser correctly applied section 196.199(2)(b), Florida Statutes, which provides that, even on government leases of land, the "buildings, or other real property improvements **owned** by the lessee" do not qualify for the exemption.

The opinion of the First District follows a long line of cases finding that the 60-day period of non-claim in section 194.171, Florida Statutes, applies to denials of claims of ad valorem tax exemptions. Accepting the facts within the four corners of the opinion under review, it is clear that no Florida court has reached a contrary conclusion. The Petitioners requested the First District to certify conflict, but the First District found no such conflict and denied the Petitioners' motion to certify the alleged conflict. This Court should also find no express or direct conflict and decline to accept jurisdiction.

SUMMARY OF ARGUMENT

The district court made a very simple and direct holding: The Property Appraiser's determination that the Petitioners own the improvements on Navarre Beach and, therefore, do not qualify for the governmental exemption in section

196.199, Florida Statutes, was subject to challenge only within the 60-day period of non-claim in section 194.171, Florida Statutes. This opinion is consistent with district court decisions from every other district. The petition for discretionary review is infected by an attempt to re-draft the opinion to better the Petitioners' chances for conflict jurisdiction. Once restricted to the facts and holdings that appear on the face of the district court's decision, the absence of jurisdictional conflict is clear.

ARGUMENT

1. THE FIRST DISTRICT COURT OF APPEAL'S CONCLUSION THAT THE 60-DAY PERIOD OF NON-CLAIM UNDER SECTION 194.171, FLORIDA STATUTES, APPLIED TO BAR THE CHALLENGE TO THE PROPERTY APPRAISER'S ASSESSMENT OF REAL PROPERTY IMPROVEMENTS OWNED BY THE TAXPAYERS DOES NOT CONFLICT WITH ANY OTHER DISTRICT COURT OR SUPREME COURT OPINION.

In order to establish conflict jurisdiction, the Petitioners must show that the opinion at issue "directly and expressly conflicts" with another district court of appeal or of the Supreme Court of Florida on the same question of law. Art. V, §3(b)(3), Fla.Const.; Fla.R.App.P. 9.030(a)(2)(A)(iv). The First District held that the 60-day period of non-claim in section 194.171, Florida Statutes, applied to the Property Appraiser's decision to place the improvements on the tax rolls. The

opinion neither directly nor expressly conflicts with any other decision of this Court or of any district court of appeal.

In this case, there is no complex issue of property classification because buildings are undeniably real property. Contrary to the Petitioners' argument, no one has attempted to assess any leasehold interest as real property. The Property Appraiser assessed the fee interests in the Petitioners' beach homes because the Petitioners have complete dominion and control of these buildings for 99 years plus unlimited 99-year renewal terms. The First District opinion noted: "The instant case involves a deliberate conclusion reached by the property appraiser that the appellant's beach homes should be assessed as private property because the improvements will not vest in the county until the termination of the 99-year lease." *Id.* at D732. Therefore, the Petitioners are the legal and equitable owners of the buildings at issue.

Having determined that the Petitioners own the improvements, the Property Appraiser correctly determined that the Petitioners do not qualify for the governmental exemption from ad valorem taxation in section 196.199, Florida Statutes. Section 196.199(2)(b), Florida Statutes, provides ample support for the Property Appraiser's denial of the governmental exemption in stating that "buildings, or other real property improvements **owned** by the lessee" do not qualify

for the exemption. The First District correctly described the Petitioner's attempt to re-cast their case for appellate purposes as an argument based purely on semantics. *Ward,* 28 Fla.L.Weekly at D732. The Petitioners' semantic argument is intended to utilize a statute of limitations applicable to refund actions (section 197.182, Florida Statutes), even though the Petitioners are not claiming a refund.

Contrary to the Petitioner's argument, in cases where a Property Appraiser has made a deliberate judgment about an application of a statutory exemption, Florida Courts have followed a long line of uninterrupted precedent that holds that denials of exemptions, like challenges to assessment valuations, are subject to the 60-day period of non-claim found in section 194.171, Florida Statutes. *Department of Revenue v. Eastern American Technologies Corporation*, 762 So.2d 1044 (Fla. 5th DCA 2000)(60-day time limit applied to claim of lessees of Canaveral Port Authority); *Nikolits v. Ballinger*, 736 So.2d 1253 (Fla. 4th DCA 1999)(removal of homestead exemption subject to 60-day jurisdictional limit) *rev. denied*, 749 So.2d 502 (Fla. 1999); *Palmer Trinity Private School v. Robbins*, 681 So.2d 809 (Fla. 3d DCA 1996)(60-day time limit applied to claim that taxpayer was entitled to educational exemption); *Hall v. Leesburg Regional Medical Center*, 651 So.2d 231 (Fla. 5th DCA 1995); *Davis v. Macedonia Housing Authority*, 641 So.2d 131 (Fla. 1st DCA 1994), *rev. denied*, 651 So.2d 1195 (Fla. 1995)(60-day time limit for challenge to denial of low-income housing exemption); *Markham v. Moriarty*, 575

So.2d 1307 (Fla. 4th DCA 1991)(60-day time limit applied to claim of Abundant Life Christian Centre), *cert. denied*, 112 S.Ct. 440 (1991). *See also Williams v. Jones*, 326 So.2d 425, 432 (Fla. 1975)(describing the very relief requested by the Petitioners in this case to be the equivalent of receiving a tax "exemption").

In *Williams v. Jones*, similarly situated taxpayers argued that they did not own their properties because they were built on similar long-term land leases in Escambia County. This Court held: "Basically, the appellants contend for a constitutional exemption from ad valorem real estate taxation . . . ." *Id.* at 432. Thus, this Court has held that the Petitioners' underlying claim is a claim for exemption from ad valorem taxation.

In the opinion at issue, the First District did not express any conflict with any decision of any other district. The Petitioners do not cite to any language in the opinion expressing a conflict with other district court opinions. On its face, the opinion does not create any such conflict. The opinion correctly notes that the cases cited in the Petitioners' jurisdictional brief were "factually dissimilar from the instant case and, thus, not supportive of the appellant's position." *Ward,* 28 Fla.L.Weekly at D732-D733. Cases that are distinguishable are not proper subjects to establish

conflict jurisdiction. *Department of Revenue v. Johnston*, 442 So.2d 950 (Fla. 1983). Thus, the cases distinguished by the First District in the opinion at bar should not be considered in support of the Petitioners' effort to establish conflict jurisdiction.

The factual distinctions with the cases cited by Petitioners were pointed out in great detail in the First District's opinion. First, the opinion described how *Sartori v. Department of Revenue*, 714 So.2d 1136 (Fla. 5th DCA 1998) and *Department of Revenue v. Sohn*, 654 So.2d 249 (Fla. 1st DCA 1995) involved cases in which the Property Appraiser admitted inadvertent mistakes and sought to correct them through a refund statute that is not at issue in the case at bar. Because the case at bar involves a judgment of the property appraiser, not an inadvertent mistake, those cases are factually dissimilar. Second, the opinion describes how *Florida Governmental Utilities Authority v. Day*, 784 So.2d 494 (Fla. 5th DCA 2001) is factually dissimilar because the "taxpayer's failure to timely file a challenge may have been a result of actions by the government." *Id.* In that case, the appellate court concluded that the Property Appraiser had essentially misled the taxpayer into believing that the taxpayer was entitled to an exemption and then waited until there was no opportunity to contest that ruling before denying the exemption. The First District opinion noted that *Day* is "distinguishable on the facts" because the instant case involved no allegations of improper conduct by the Property Appraiser.

The Petitioners suggest that the First District somehow ignored *Department of Revenue and Tedder v. Pepperidge Farm, Inc.*, 28 Fla. L. Weekly D784 (Fla 2d DCA March 19, 2003). In truth, the *Pepperidge Farm* case was decided after the First District's decision. Yet, even then, neither opinion references the other, nor is there any "express" conflict. The two opinions do not expressly or implicitly conflict on the same question of law because the *Pepperidge Farm* decision involved the issue of whether software was tangible or intangible property. In stark contrast, this case involves the issue of whether improvements and buildings, which are indisputably real property, are owned by the Petitioners or the government. This is a case of identifying the owner of a building, not a question of classifying a type of property. Of course, a building is real property. Therefore, the two opinions are not in conflict on the same question of law.

With limited exception, the Petitioners ignore the only appropriate source of the facts upon which the proceeding will turn - the lower court's opinion. *Hardee v. State*, 534 So. 2d 706, 708 n.* (Fla. 1988) ("for purposes of determining conflict jurisdiction, this Court is limited to the facts which appear on the face of the opinion"); *Reaves v. State*, 485 So. 2d 829, 830 n.3 (Fla. 1986) ("[t]he only facts relevant to our decision to accept or reject such petitions are those facts contained with the four corners of the decision allegedly in conflict"). The First District found that the Petitioners were seeking an exemption, and that the contrived argument that

they were seeking a reclassification was based on semantics alone. The First District also found that the case involved the deliberate judgment of the Property Appraiser that the Petitioners own their beach homes because the improvements will not vest in the county until the termination of the long-term leases. The facts on the face of the opinion are the controlling facts for purposes of considering conflict jurisdiction. The First District's conclusion that the 60-day period of non-claim applies to the Property Appraiser's conclusion that the governmental exemption did not apply to the Petitioners' beach homes is entirely consistent with all of the other district court opinions finding that denials of exemptions are subject to the 60-day period of non-claim in section 194.171, Florida Statutes.

CONCLUSION

There is no express or direct conflict in this case. The Petitioner is asking this Court to *disagree* with the First District's opinion, and based upon that disagreement, to find a conflict of decisions. This disagreement on the merits falls short of the "express and direct conflict" standard imposed by Article V, Section 3(b)(3), of the Florida Constitution.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify a true and correct copy of the foregoing brief was mailed to: Donald H. Partington, Clark, Partington, Hart, Larry, Bond & Stackhouse, P.O. Box 13010, Pensacola, Florida 32591-3010; and hand-delivered to Joseph Mellichamp, III, Carlton Fields, P.A., Post Office Drawer 190, Tallahassee, Florida 32302; and to Benjamin K. Phipps, The Phipps Firm, Post Office Box 1351, Tallahassee, Florida 32302 on this _____ day of June, 2003.

_____
Thomas M. Findley

CERTIFICATE OF COMPLIANCE

I hereby certify that the font requirements of Rule 9.210(a), Florida Rules of Appellate Procedure, have been complied with in this Brief and the size and style of type used in this brief is Times New Roman 14 point.

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Thomas M. Findley